

(17,020.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 435.

JAMES NICOL, APPELLANT,

vs.

JOHN AMES, UNITED STATES MARSHAL FOR THE
NORTHERN DISTRICT OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Bond for costs	2	1
Petition for writ of <i>habeas corpus</i>	4	2
Exhibit A—Warrant of commitment	9	5
B—Act of legislature of the State of Illinois incor- porating the Chicago board of trade, approved February 18, 1859	10	6
Exhibit C—Record of the district court of the United States for the northern district of Illinois in case of The United States <i>vs.</i> James Nicol	14	8
Caption	14	8
Order to file information and docket cause	15	8
Information	15	8
Affidavit of James H. Milne	17	10
Order to issue bench warrant	18	10
Bench warrant	18	11
Marshal's return	19	11

	Original.	Print.
Motion to quash information	20	12
Order overruling motion to quash	21	13
Demurrer to information	22	13
Order overruling demurrer.....	23	14
Stipulation waiving jury.....	23	14
Arraignment and plea	24	14
Finding by the court	24	14
Order overruling motion for new trial	25	15
Motion in arrest of judgment	25	15
Order overruling motion in arrest of judgment....	27	16
Judgment and sentence ...	28	17
Clerk's certificate	28	17
Order taking case under advisement and granting bail	30	17
Writ of <i>habeas corpus</i>	31	18
Marshal's return	32	18
Bail bond ...	33	19
Opinion	35	20
Order dismissing petition, discharging writ, remanding petitioner, allowing appeal, &c.	49	26
Petition for appeal	51	27
Assignment of errors....	52	27
Appeal bond	53	28
Clerk's certificate	55	28
Citation and service ..	56	29

1 Pleas in the circuit court of the United States for the northern district of Illinois, northern division, begun and held at the United states court-room, in the city of Chicago, in said district and division, before the Hon. John W. Showalter, circuit judge of the United States for the seventh judicial circuit, on Friday, the seventh day of October, being one of the days of the regular July term of said court, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third year.

S. W. BURNHAM, *Clerk.*

In the Matter of the Petition of JAMES NICOL for a Writ of *Habeas Corpus*. 24930. Petition.

Be it remembered that on this day, to wit, the thirteenth day of September, 1898, came James Nicol, by his attorney, and filed in the clerk's office of said court his bond for costs and petition for writ of *habeas corpus*; which said bond and petition are respectively in the words and figures following, to wit:

2 *Bond for Costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss :

Circuit Court, October Term, A. D. 1898.

JAMES NICOL
vs.
JOHN C. AMES, as Marshal. } In —

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the petitioner of any costs ordered or adjudged to be paid by him hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against him.

Dated this 13th day of September, A. D. 1898.

HENRY S. ROBBINS,
Residence, 414 N. State St., Chicago.

3 I, Henry S. Robbins, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate situate in the northern district of Illinois the sum of four hundred dollars over and above my just debts and liabilities.

HENRY S. ROBBINS.

Sworn to and subscribed before me this 13th day of September, 1898.

GEORGE DAY M. BIRNEY,
Notary Public, Cook County, Illinois.

[SEAL.]

(Endorsed :) Filed Sept. 13, 1898. S. W. Burnham, clerk.

Petition for Writ of Habeas Corpus.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

To the circuit court of the United States for said district and division:

Your petitioner, James Nicol, of the city of Chicago and State of Illinois, complaining, shows that he is unjustly and unlawfully detained and imprisoned by John Ames, United States marshal for the northern district of Illinois, at the city of Chicago and State of Illinois, by virtue of the warrant of commitment, a copy of which is hereto annexed as "Exhibit A;" which order was issued under the following circumstances:

Your petitioner is a citizen of the United States and has been a citizen of the State of Illinois for over twenty-five years, and at the time of the grievances herein complained of had never been in the military or naval services of the United States; that your petitioner has for some years prior to the second day of September, 1898, been a member of the Chicago board of trade, a commercial exchange duly incorporated by a special act of the legislature of the State of Illinois approved February 18, 1859, a copy of which is hereto annexed and made a part hereof as "Exhibit B;" that the objects of such association are declared by its by-laws to be—

"To maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information; and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

That said association owns and occupies, in the city of Chicago, an exchange building where its members meet daily (except Sundays and holidays), between certain business hours, for the purpose of buying and selling flour, wheat, corn, oats, rye, barley, hay, straw, flaxseed, grass seed, field seed, pork in all its forms, meats, lard, and other food products, and for the transaction of such other business as is incident thereto; that among its members there are some whose business it is to purchase in the country or receive on consignment from persons in the country some or all of the foregoing articles and sell the same upon said board of trade, and there are other members of said association whose business it is to buy upon said exchange some or all of said articles of merchandise, either for themselves or on commission, and to deliver or ship the same to consumers or distributors throughout this country and Europe, and that the sales and contracts for sale of said merchandise so made upon said board of trade are identical in their character with all other sales and contracts for sales of the same kind of merchandise made in the city of Chicago and elsewhere throughout the United

States at other places than on such exchanges, boards of trade, or other similar places.

That on the second day of September, 1898, in the course of his business on the said board of trade your petitioner, by oral contract, sold for immediate delivery, at the city of Chicago, to one James H. Milne, also a member of the said board of trade and a citizen of the State of Illinois, two car-loads of oats, consisting of two thousand two hundred and eighty-nine bushels of oats, then in said city of Chicago,

at a price of twenty and three-quarters cents per bushel, and for the total sum of four hundred and seventy-four dollars and ninety-eight cents, and thereafter, on, to wit, the

6 eighth day of September, 1898, John C. Black, Esquire, as the United States attorney for the northern district of Illinois, presented to and with leave of said court filed in the district court of the United States for the northern district of Illinois, northern division, a certain information and affidavit reciting said sale by your petitioner of said two car-loads of oats, and also reciting that your petitioner had made such sale without then and there making and delivering to said buyer any bill, memorandum, agreement, or other evidence of said sale showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it referred, as required by the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes;" and thereupon said court, upon said petition, ordered a bench warrant to issue against your petitioner, whereon your petitioner was brought into said court, and, said information being read to him, interposed a motion to quash the same upon the ground that that part of said act of Congress approved June 13, 1898, upon which said information is based is unconstitutional and void, but said district court entered an order denying said motion and requiring your petitioner to plead to said information, whereupon your petitioner interposed a demurrer to said information upon the ground that that part of said act of Congress approved June 13, 1898, upon which said information is based is unconstitutional and void, and that for that reason said information did not charge an offense or crime against the laws of the United States, but said court overruled said demurrer, and whereupon your petitioner was arraigned upon said information and thereupon entered his plea of not guilty; and said case having

7 proceeded to trial (a jury having been waived by the Government and this defendant), said court, upon a trial, entered a general finding, finding the defendant guilty as charged in said information; whereupon your petitioner successively entered his motion for a new trial and in arrest of judgment, which were successively overruled, and thereupon said court entered its sentence and judgment of conviction wherein it imposed upon your petitioner a fine of five hundred dollars, and committed your petitioner to the county jail of Cook county, State of Illinois, until the said fine and costs should be paid, but suspending execution of said sentence until 9 o'clock a. m. Monday, September 12, 1898, a copy of which said affidavit, information, motion to quash, demurrer, motions for

a new trial and arrest of judgment, orders, sentence, and judgment of conviction, being the entire record of said case in said court, are annexed hereto and made a part hereof as "Exhibit C."

And thereupon, said order of commitment coming to the hands of said marshal and your petitioner not having paid said fine and costs as therein required, said marshal, after the hour of nine o'clock a. m. on the 12th day of September, 1898, took your petitioner into his custody under said warrant, and now has your petitioner in his custody, and is now in the act of transporting him to said jail specified in said commitment.

And your petitioner claims that he is restrained and deprived of his liberty as above stated unlawfully, and that that part of said act of Congress approved June 13, 1898, upon which said information is based is unconstitutional and void for the following reasons and others:

First. Because it is outside of the power of Congress and exclusively within the legislative power of the several States to prescribe whether contracts made within such States shall be made orally or shall be evidenced by written memoranda.

8 Second. Because the tax in supposed aid of which that part of said act of Congress upon which said information is based was enacted is contrary to the Constitution of the United States, in that it is "not uniform" throughout the United States, being imposed not upon all bills, memoranda, agreements, or other evidences of sales or agreements to sell merchandise or products, but on such only as relate to such sales or agreements to sell when made at an exchange, board of trade, or other similar place, and hence that said information does not charge an offense or crime under or by virtue of the laws of the United States, and that said district court for the northern district of Illinois, northern division, in so trying and committing to jail your petitioner as aforesaid acted wholly without jurisdiction or legal authority so to do, and said order under which your petitioner is held in custody is wholly void.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said John Ames, United States marshal for the northern district of Illinois, may issue at once in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require, and that a writ of certiorari, if necessary, may also be issued to the clerk of the district court for the northern district of Illinois, northern division, commanding him to transmit at once to this court a full, complete, and true transcript of said cause and pleadings wherein your petitioner has been convicted and is detained as aforesaid.

JAMES NICOL.

HENRY S. ROBBINS,
Counsel for Petitioner.

9 UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss :

James Nicol, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein made are true.

JAMES NICOL.

Subscribed and sworn to before me this 13th day of September, 1898.

[SEAL.]

WIRT E. HUMPHREY,
*United States Commissioner
 for the Northern District of Illinois.*

EXHIBIT "A."

Copy.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss :

The President of the United States of America to the marshal of the northern district of Illinois, Greeting :

Whereas James Nicol appeared before the district court of the United States for the northern district of Illinois on the eighth day of September, 1898, to answer an information filed herein against him for having on September 2, 1898, with intent to evade certain provisions of the act of Congress of June 13, 1898, known as the war-revenue law of 1898, made a sale of merchandise on the Chicago board of trade to one James H. Milne without making and for having unlawfully failed to make a memorandum of the said sale as required by law aforesaid, and the said James Nicol, upon hearing in due form of law, having been found guilty as charged in the said information and having on that day been sentenced to pay a fine of five hundred dollars and the costs of court and to imprisonment in the county jail of Cook county, Illinois, until the same should be paid (which said sentence the said court directed should not be executed until the twelfth day of September, 1898):

Now, therefore, you are hereby commanded to commit the said James Nicol to the county jail of Cook county, Illinois, to be there safely kept until said fine and costs are paid or he is otherwise discharged by due process of law.

Witness the Hon. Peter S. Grosscup, judge of the district court of the United States of America, at Chicago aforesaid, this 12th day of September, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123rd year.

T. C. MacMILLAN,
*Clerk United States District Court,
 Northern District of Illinois.*

(Endorsed :) Copy. No. 2944. District court of the United States, northern district of Illinois. The United States vs. James Nicol. Copy. Commitment on sentence. Issued 12th day of September, 1898. T. C. MacMillan, clerk.

"EXHIBIT B." *Exhibit "B."*

Be it enacted by the people of the State of Illinois, represented in the General Assembly :

SEC. 1. That the persons now composing the board of trade of the city of Chicago, are hereby created a body politic and corporate, under the name and style of "The Board of Trade of the City of Chicago" and by that name may sue and be sued, implead
11 and be impleaded, receive and hold property and effects, real and personal, by gift, devise or purchase, and dispose of the same by sale, lease, or otherwise (said property so held not to exceed at any time the sum of two hundred thousand dollars) may have a common seal, and alter the same from time to time; and make such rules, regulations, and by-laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

SEC. 2. That the rules, regulations and by-laws of the said existing board of trade shall be the rules and by-laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said association known as the "Board of Trade of the City of Chicago," shall be the officers of the corporation hereby created, until their respective offices shall regularly expire or be vacated, or until the election of new officers according to the provisions hereof.

SEC. 3. The officers shall consist of a president, one or more vice-presidents, and such other officers as may be determined upon by the rules, regulations, or the by-laws of said corporation. All of said officers shall respectively hold their offices for the length of time fixed upon by the rules and regulations of said corporation hereby created, and until their successors are elected and qualified.

SEC. 4. The said corporation is hereby authorized to establish such rules, regulations and by-laws for the management of their business, and the mode in which it shall be transacted, as they may think proper.

SEC. 5. The time and manner of holding elections and
12 making appointments of such officers as are not elected, shall be established by the rules, regulations and by-laws of said corporation.

SEC. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the rules, regulations and by-laws thereof.

SEC. 7. Said corporation may constitute and appoint committees or reference and arbitration, and committees of appeals, who shall be governed by such rules and regulations as may be prescribed in the rules, regulations or by-laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by

members of the association, or by other persons not members thereof; the acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses and issue subpoenas and attachments, compelling the attendance of witnesses the same as justices of the peace, and in like manner directed to any constable to execute.

SEC. 8. When any submission shall have been made in writing, and a final award shall have been rendered, and no appeal taken within the time fixed by the rules or by-laws, then, on filing such award and submission with the clerk of the circuit court, an execution may issue upon such award as if it were a judgment rendered in the circuit court, and such award shall thenceforth have the force and effect of such a judgment, and shall be entered upon the judgment docket of said court.

SEC. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, 13 whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts, and the president or secretary is hereby authorized to administer such oaths of office as may be prescribed in the by-laws or rules of said corporation. Said bonds shall be made payable and conditioned as prescribed by the rules or by-laws of said corporation, and may be sued and the moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

SEC. 10. Said corporation shall have power to appoint one or more persons, as they may see fit, to examine measure, weigh, gauge, or inspect flour, grain, provisions, liquor, lumber, or any other articles of produce or traffic commonly dealt in by the members of said corporation; and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such article shall be evidence between buyer and seller of the quantity, grade or quality of the same, and shall be binding upon the members of said corporation or others interested, and requiring or assenting to the employment of such weighers, measurers, gaugers, or inspectors; nothing herein contained, however, shall compel the employment, by any one, of any such appointee.

SEC. 11. Said corporation may inflict fines upon any of its members and collect the same, for breach of its rules, regulations or by-laws; but no fine shall exceed five dollars. Such fines may be collected by action of debt, before a justice of the peace, in the name of the corporation.

SEC. 12. Said corporation shall have no power or authority to do or carry on any business, excepting such as is usual in the 14 management of boards of trade or chambers of commerce or as provided in the foregoing sections of this bill.

EXHIBIT "C."

Pleas had at a regular term of the district court of the United States of America for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the first Monday of July, it being the fourth day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third year.

THE UNITED STATES }
 vs. } 2944. Vio. Int. Rev. Laws.
 JAMES NICOL. }

Be it remembered that heretofore, to wit, on the 8th day of September, A. D. 1898, it being one of the days of the regular July term of the district court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the first Monday of July, it being the fourth day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third year, before the Honorable William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, sitting in this court by designation, presiding; John C. Ames, United States marshal for said district, and T. C. MacMillan, clerk of said court, the following order was had and entered of record in said cause, to wit:

15 THE UNITED STATES }
 vs. } 2944. Vio. Int. Rev. Laws.
 JAMES NICOL. }

Comes John C. Black, Esq., district attorney, and presents an information against James Nicol, the defendant herein, charging the said James Nicol with violating section 25 of the act of Congress of June 13th, 1898, and asks leave of the court to file the same; whereupon it is ordered by the court that said information be filed and the cause placed upon the dockets of this court.

And afterwards, to wit, on the 8th day of September, A. D. 1898, said information was filed, the same being in the words and figures following, to wit:

NORTHERN DISTRICT OF ILLINOIS, }
 Northern Division, } set:

In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

Be it remembered that John C. Black, attorney of the United States of America for the northern district of Illinois, who for the

said United States in this behalf prosecutes, in his own person comes here into the district court of the said United States for the division and district aforesaid on this eighth day of September, in this same term, and for the said United States gives the court here to understand and be informed that James Nicol, of the city of Chicago, in the said division and district, on the second day of September, in the year of our Lord eighteen hundred and ninety-eight, at Chicago

16 aforesaid, in the division and district aforesaid, upon a certain board of trade, to wit, the Chicago board of trade, with intent then and there on the part of him, the said James Nicol, to evade the provision in that behalf in the act of Congress approved June 13, 1898, and entitled "An act to provide ways and means to meet war expenditures, and for other purposes," unlawfully did make to James H. Milne, of the same city, a certain sale of merchandise for immediate and present delivery at the said city of Chicago—that is to say, two car-loads of oats, consisting of two thousand two hundred and eighty-nine bushels of oats (then in the said city of Chicago), at the price of twenty and three-quarters cents per bushel and for a total sum of four hundred and seventy-four dollars and ninety-eight cents—without then and there making and delivering to the said James H. Milne any bill, memorandum, agreement, or other evidence of the said sale showing the date thereof, the name of the seller, the amount of the said sale, and the matter or thing to which it referred, as required by law; but, on the contrary thereof, unlawfully did refuse, fail, and neglect to make any bill, memorandum, agreement, or other evidence of the said sale showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it referred, as required by law, against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

Whereupon the said attorney of the said United States, who prosecutes, as aforesaid, for the said United States, prays the consideration of the court here in the premises, and that due process of law may be awarded against him, the said James Nicol, in this behalf to make him answer to the said United States concerning the premises aforesaid.

JOHN C. BLACK,
United States Attorney.

17 (Endorsed:) No. 2944. District court, criminal, N. div.
The United States vs. James Nicol. Information on sec. 25, act June 13, 1898 (int. rev. law). Filed in open court this 8th day of September, A. D. 1898. T. C. MacMillan, clerk. John C. Black, U. S. att'y, N. dist. Ills.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the affidavit of James H. Milne was filed in said court, said affidavit being in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

James H. Milne, being duly sworn, says that on the second day of September, 1898, upon the Chicago board of trade, in the city of Chicago, James Nicol, of the city of Chicago and a member of said board of trade, made to this deponent a certain sale of merchandise for immediate and present delivery at the city of Chicago, to wit, two car-loads of oats, consisting of two thousand two hundred and eighty-nine bushels of oats, then in said city of Chicago, at the price of twenty and three-quarters cents per bushel and for the total sum of four hundred and seventy-four dollars and ninety-eight cents, without then or subsequently delivering to this deponent any bill, memorandum, agreement, or other evidence showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it referred.

And further deponent sayeth not.

JAMES H. MILNE.

Subscribed and sworn to before me this 7th day of September, 1898.

18 WIRT E. HUMPHREY,
 United States Commissioner for the
 Northern District of Illinois. [SEAL.]

Endorsed: No. 2944. District court, criminal, N. div. The United States vs. James Nicol. Affidavit. Filed in open court this 8th day of September, A. D. 1898. T. C. MacMillan, clerk. John C. Black, U. S. att'y, N. dist. Ills.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable William H. Seaman, judge presiding, to wit:

THE UNITED STATES }
 vs. } 2944. Vio. Int. Rev. Laws.
 JAMES NICOL. }

Comes John C. Black, Esq., district attorney, and on his motion it is ordered by the court that a bench warrant be awarded for James Nicol, the defendant herein.

And afterwards, to wit, on the 8th day of September, A. D. 1898, a bench warrant was issued out of and under the seal of said court directed to the marshal of the northern district of Illinois to serve on the defendant, James Nicol; which said bench warrant is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, ss :

District Court of the United States of America, Northern District of Illinois.

To the marshal of the northern district of Illinois, Greeting :

We command you to take James Nicol, if he shall be found in your district, and him safely keep, so that you have his body
19 before our judge of our district court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, forthwith to answer unto the United States of America in an information pending in said court against him for violating the internal-revenue laws of the United States ; and have you then and there this writ, with your return thereon.

Witness the Hon. Peter S. Grosscup, judge of the district court of the United States of America, at Chicago aforesaid, this 8th day of September, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123rd year.

T. C. MacMILLAN, *Clerk*. [SEAL.]

Endorsed : No. 2944. District court of the United States, northern district of Illinois. United States of America vs. James Nicol. Bench warrant, returnable forthwith. T. C. MacMillan, clerk.

And afterwards, to wit, on the 8th day of September, A. D. 1898, said bench warrant was returned and filed, with the marshal's return thereon endorsed in the words and figures following, to wit :

I have duly executed this writ within my district by arresting the within-named defendant, James Nicol, at Chicago, Ills., at ten o'clock a. m., September 8th, 1898, and took him before the Honorable Wm. H. Seaman, judge.

JOHN C. AMES,
U. S. Marshal, Nor. Dist. Ill.,
By GEO. Q. ALLEN, *Deputy.*

Fees : 1 service, \$2.00 ; no mileage (no expense).

Endorsed : Returned and filed this 8th day of Sep., A. D. 1898. T. C. MacMillan, clerk.

And afterwards, to wit, on the 8th day of September, A. D. 1898, comes the defendant, by his attorney, and files in said court a motion to quash the information filed herein, said motion being in the words and figures following, to wit :

20 In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

UNITED STATES }
vs. }
JAMES NICOL. }

And now comes the defendant, James Nicol, by Henry S. Robbins, his attorney (the said Nicol also being present in open court), and moves the court to quash the information filed herein upon the ground that the said information does not charge or set forth a crime against or under the laws of the United States for the reason that that part of the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," upon which said information is based, is unconstitutional and void upon the following (and other) grounds:

First. Because it is beyond the power of Congress and exclusively within the power of the several States to prescribe, as said act undertakes to do, whether contracts made within such States shall be made orally or shall be evidenced by written memoranda.

Second. Because the tax, in aid of which that part of said act of Congress upon which said information is based, was enacted is contrary to the Constitution of the United States, in that it is not uniform throughout the United States because not imposed upon all bills, memoranda, agreements, or other evidences of sales or agreements to sell merchandise, but on such only as relate to such sales or agreements to sell when made at an exchange, board of trade, or other similar place, said Chicago board of trade mentioned in said information being a commercial exchange duly

21 incorporated by a special act of the legislature of the State of Illinois approved February 18, 1859, and owning and occupying in the city of Chicago an exchange building, where its members meet between certain hours every business day for the purpose of buying and selling flour, wheat, corn, rye, oats, barley, hay, straw, flax seed, grass seed, field seeds, pork in all its forms, meats, lard, and other food products, and the sales and contracts for sales of such merchandise so made upon said board of trade being identical in their character with all other sales and contracts for sales of the same kind of merchandise made throughout the United States at other places than such exchanges, boards of trade, and other similar places.

Wherefore the defendant prays that said information may be quashed.

JAMES NICOL,
By HENRY S. ROBBINS,
His Attorney.

Endorsed: No. 2944. U. S. district court. United States vs. James Nicol. Motion to quash. Filed in open court this 8th day of September, A. D. 1898. T. C. MacMillan, clerk. Henry S. Robbins, Home insurance building, Chicago.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable William H. Seaman, judge presiding, to wit:

THE UNITED STATES }
 vs. } 2944. Vio. Int. Rev. Laws.
 JAMES NICOL. }

Come the parties, by their attorneys, and the defendant in his own proper person, and the defendant, by his counsel, moves the court to quash the information filed herein against him; whereupon, after due consideration, it is ordered by the court that the
 22 said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 8th day of September, A. D. 1898, comes the defendant, by his counsel, and files in said court a demurrer to the information filed herein against him, said demurrer being in the words and figures following, to wit:

In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

UNITED STATES }
 vs. }
 JAMES NICOL. }

And now comes the said James Nicol, by Henry S. Robbins, his attorney, and having heard the said information read, he says that the United States ought not to impeach or implead him, the said James Nicol, by reason of the premises in the said information named and specified, because he says that the said information and the matters therein contained are not sufficient in law, and he need not nor is he obliged by the law of the land to answer thereto, and for ground of demurrer the said defendant avers that that part of the act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," upon which said information is based, is unconstitutional and void, and hence said information does not charge an infringement of or crime against the laws of the United States, and this he is ready to verify.

Wherefore, and because of the insufficiency of said information, the said James Nicol prays judgment, and that he may be
 23 dismissed and discharged by the court here of and from the premises above charged upon him in form aforesaid.

HENRY S. ROBBINS,
 Attorney for Defendant.

Endorsed: No. 2944. U. S. district court. United States vs. James Nicol. Demurrer. Filed in open court this 8th day of September, A. D. 1898. T. C. McMillan, clerk. Henry S. Robbins, Home insurance building, Chicago.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause before the Honorable William H. Seaman, judge presiding, to wit :

THE UNITED STATES }
 vs. } 2944. Vio. Int. Rev. Laws.
 JAMES NICOL. }

This cause coming on to be heard upon the demurrer of the defendant to the information filed herein against him, come the parties, by their attorneys, and the defendant in his own proper person, and after hearing the arguments of counsel it is ordered by the court that the said demurrer be, and the same is hereby, overruled.

And afterwards, to wit, on the 8th day of September, A. D. 1898, a stipulation waiving a jury was filed in said court, said stipulation being in the words and figures following, to wit :

In the District Court of the United States of America for the Northern District of Illinois, Northern Division.

THE UNITED STATES }
 vs. } No. —. Information.
 JAMES NICOL. }

24 The parties plaintiff and defendant in this case hereby consent and stipulate that the same may be tried and determined by the court without the intervention of a jury, and that trial by a jury in this case is expressly waived.

Dated this eighth day of September, A. D. 1898.

JOHN C. BLACK,

United States Attorney.

HENRY S. ROBBINS,

Attorney for Defendant.

Endorsed: No. 2944. U. S. district court for the N. dist. of Ill., N. div. The United States *vs.* James Nicol. Stipulation waiving jury (sec. 649, R. S.). Filed Sept. 8th, A. D. 1898. T. C. MacMillan, clerk. John C. Black, U. S. attorney. — —, att'y for def't.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause before the Honorable William H. Seaman, judge presiding, to wit :

THE UNITED STATES }
 vs. } 2944. Vio. Int. Rev. Laws.
 JAMES NICOL. }

Come the parties, by their attorneys, and the defendant in his own proper person, and being arraigned upon the information filed herein against him, the defendant pleads not guilty thereto.

And now, it appearing to the court that the parties to this cause have filed with the clerk of this court a stipulation in writing consenting that this cause may be tried and determined by the court

without the intervention of a jury, the court proceeds with the trial thereof.

25 Having heard the evidence by the parties adduced and arguments of counsel, the court, after due consideration, finds the defendant guilty as charged in the information ; whereupon the defendant, by his counsel, moves the court for a new trial of this cause.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause before the Honorable William H. Seaman, judge presiding, to wit :

THE UNITED STATES	} 2944. Vio. Int. Rev. Laws.
vs.	
JAMES NICOL.	

This cause coming on to be heard upon the motion of the defendant for a new trial hereof, come the parties, by their attorneys, and the defendant in his own proper person, and after arguments of counsel and due consideration it is ordered by the court that the said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 8th day of September, A. D. 1898, a motion in arrest of judgment upon the finding herein was filed in said court, said motion being in the words and figures following, to wit :

In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

UNITED STATES	}
vs.	
JAMES NICOL.	

26 And now comes James Nicol, by Henry S. Robbins, his attorney, and moves the court in arrest of judgment on the finding herein, and in support of said motion alleges that said information does not charge or set forth a crime against or under the laws of the United States for the reason that that part of the act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes" upon which said information is based is unconstitutional and void upon the following (and other) grounds :

First. Because it is beyond the power of Congress and exclusively within the power of the several States to prescribe, as said act undertakes to do, whether contracts made within such States shall be made orally or shall be evidenced by written memoranda.

Second. Because the tax, in aid of which that part of said act of Congress upon which said information is based was enacted, is contrary to the Constitution of the United States, in that it is not uniform throughout the United States because not imposed upon all

bills, memoranda, agreements, or other evidences of sales or agreements to sell merchandise, but on such only as relate to such sales or agreements to sell when made at an exchange, board of trade, or other similar place, said Chicago board of trade mentioned in said information being a commercial exchange duly incorporated by a special act of the legislature of the State of Illinois approved February 18, 1859, and owning and occupying in the city of Chicago an exchange building where its members meet between certain hours on every business day for the purpose of buying and selling flour, wheat, corn, rye, oats, barley, hay, straw, flax seed, grass seed, field seeds, pork in all its forms, meats, lard, and other food products, and the sales and contracts for sales of such merchandise so made upon said board of trade being identical in their character with all other sales and contracts for sales of the same kind of merchandise made throughout the United States at other places than such exchanges, boards of trade, and other similar places.

Therefore the defendant prays that judgment be not entered on the finding herein.

JAMES NICOL,
By HENRY S. ROBBINS,
His Attorney.

Endorsed: No. 2944. U. S. district court. United States *vs.* James Nicol. Motion in arrest. Filed in open court this 8th day of September, A. D. 1898. T. C. MacMillan, clerk. Henry S. Robbins, Home insurance building, Chicago.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause before the Honorable William H. Seaman, judge presiding, to wit:

THE UNITED STATES	} 2944. Vio. Int. Rev. Laws.
<i>vs.</i>	
JAMES NICOL.	

This cause coming on to be heard upon the motion of the defendant in arrest of the judgment of the court herein, come the parties, by their attorneys, and the defendant in his own proper person, and after arguments of counsel and due consideration it is ordered by the court that the said motion be, and the same is hereby, overruled; to which the defendant duly excepted.

And afterwards, to wit, on the 8th day of September, A. D. 1898, the following order was had and entered of record in said cause before the Honorable William H. Seaman, judge presiding, to wit:

28	THE UNITED STATES	} 2944. Vio. Int. Rev. Laws.
	<i>vs.</i>	
	JAMES NICOL.	

Come the parties, by their attorneys, and the defendant in his own proper person to have the sentence and judgment of the court pro-

nounced upon him, he having heretofore, to wit, on the 8th day of September, A. D. 1898, one of the days of this term of this court, been adjudged guilty in due form of law as charged in the information filed herein against him, and being asked by the court if he had anything to say why the sentence and judgment of the court should not now be pronounced upon him, and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered by the court, and as the sentence and judgment of the court upon the findings of guilty so rendered herein, as aforesaid, that the defendant, James Nicol, forfeit and pay to the United States a fine in the sum of five hundred dollars, besides the costs in this behalf expended.

It is further ordered by the court that the said defendant stand committed to the county jail of Cook county, Illinois, until said fine and costs are paid or he is otherwise discharged by law.

For good cause shown, it is ordered by the court that execution of the sentence and judgment herein be, and the same is hereby, suspended until Monday, September 12th, A. D. 1898.

NORTHERN DISTRICT OF ILLINOIS, }
Northern Division. }

I, T. C. MacMillan, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the proceedings had in said court in the case of The United States *vs.* James Nicol, as the same appears from the records and files of said court now remaining in my custody.

29 In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Chicago, in
said district, this 9th day of September, A. D. 1898.

T. C. MACMILLAN, *Clerk*,
By C. R. PICKARD,
Deputy Clerk.

(Endorsed :) Filed Sep. 13, 1898. S. W. Burnham, clerk.

30 And on, to wit, the thirteenth day of September, in the July
term of said court, 1898, in the record of proceedings thereof
in said entitled cause, before the Hon. John W. Showalter, circuit
judge, appears the following entry, to wit:

In the Matter of the Petition of JAMES NICOL for a Writ of *Habeas Corpus*. 24930.

Now, on this day, comes the petitioner, by his attorney, and, by leave of court, files his petition herein, and thereupon it is ordered that a writ of *habeas corpus* issue instant, returnable forthwith; and now comes the marshal of this district, by John C. Black, Esq., his attorney, and makes return to said writ by personally bringing said James Nicol before the court and presenting the record of the judgment upon which said detention is based; and now comes on

to be heard the motion of said petitioner to be discharged under said writ, and the said James Nicol being personally present, and also by Henry S. Robbins, Esq., his attorney, and the respondent, John C. Ames, said marshal, being represented by the Hon. John C. Black, United States attorney, and the court having now heard the arguments to conclusion, and not being sufficiently advised in the premises, takes time to consider; and now comes the petitioner, by his said attorney, and enters his motion to be enlarged on bail, and, the court having considered the same, it is ordered that said petitioner, James Nicol, be released on bail in the sum of one thousand dollars, with surety to be approved by the court.

31 On the same day, to wit, the thirteenth day of September, 1898, a writ of *habeas corpus* issued out of the clerk's office of said court, directed to John C. Ames, United States marshal, to execute; which said writ, together with the marshal's return thereon endorsed, is in the words and figures following, to wit:

Writ of Habeas Corpus.

Circuit Court of the United States of America, Northern District of Illinois, Northern Division, ss:

The United States of America to John C. Ames, United States marshal, northern district of Illinois, Greeting:

We command you that you do, without excuse or delay, bring or cause to be brought before the circuit court of the United States of America for the northern district of Illinois, now sitting in the court-room of said circuit court, in the city of Chicago, in said district, the body of James Nicol, by whatever name or addition he is known or called, and who is unlawfully detained in your custody, as it is said, together with the day and cause of his caption and detention, then and there to perform and abide such order and direction as our said circuit court shall make in that behalf. Hereof make due return, under the penalty of what the law directs.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 13th day of [SEAL.] September, in the year of our Lord one thousand eight
32 hundred and ninety-eight, and of our Independence the 122nd year.

S. W. BURNHAM, *Clerk.*

Marshal's Return.

In the Circuit Court of the United States of America for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of JAMES NICOL for a Writ of *Habeas Corpus.*

Marshal's return to writ.

I, John C. Ames, hereby certify and make return to the writ of *habeas corpus* issued in this case that I am the marshal of the United

States for the northern district of Illinois, and that I now hold the above-named petitioner in my custody as such marshal by virtue of a certain commitment issued by Thomas C. MacMillan, clerk of the district court of the United States for the said district, on this thirteenth day of September, 1898, which is set forth in full in the petition filed in this case, and a copy of which is hereto attached, directing me as such marshal to forthwith commit the said petitioner to the county jail of Cook county, in the said State of Illinois, until a certain fine of five hundred dollars and costs, adjudged against the said James Nicol by the said district court on the second day of September, 1898, should be paid or the said petitioner otherwise discharged by law, a transcript of the record of the proceedings of the said district court in which said warrant was issued attached to the said petition as Exhibit C. Nevertheless I have the body of the said James Nicol now before this honorable court.

JOHN C. AMES,
United States Marshal.

(Endorsed :) Filed Sept. 14, 1898. S. W. Burnham, clerk.

33 On the same day, to wit, the thirteenth day of September, 1898, came James Nicol, as principal, and Henry S. Robbins, as surety, and filed in the clerk's office of said court a bail bond; which said bail bond is in the words and figures following, to wit:

Bail Bond.

Know all men by these presents that we, James Nicol, as principal, and Henry S. Robbins, as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this thirteenth day of September, A. D. 1898.

The condition of this obligation is such that whereas, on the said thirteenth day of September, A. D. 1898, in pursuance of the prayer of a petition of the said James Nicol, filed in the circuit court of the United States of America for the northern division of the northern district of Illinois, a writ of *habeas corpus* was issued by order of the Hon. John W. Showalter, judge of the said court, directed to John C. Ames, marshal of the said United States for the district aforesaid, and commanding him to have the body of the said James Nicol (then in custody of the said marshal by virtue of a certain mittimus theretofore issued upon a sentence and judgment of the district court of the said United States for the same division and district) before the said circuit court, and the said James Nicol was thereupon brought before the said judge, and such proceedings were had as that the said James Nicol was ordered admitted to bail in the sum of one thousand dollars pending the hearing on the said petition: Now, if the said James Nicol shall personally be and appear before the said circuit court from day to day here-

after until the determination of the said hearing, and shall not depart that court without leave thereof, and shall, in case the said court shall refuse to discharge him in pursuance of the said petition and remand him to the custody of the said marshal, surrender himself to the said marshal to be further dealt with in pursuance of the said mittimus, then this obligation shall be void, and otherwise shall remain in full force.

JAMES NICOL.
HENRY S. ROBBINS. [SEAL.]

Approved this 13th day of September, 1898.

JOHN W. SHOWALTER, *Judge*.

(Endorsed :) Filed Sep. 13, 1898. S. W. Burnham, clerk.

35 Afterwards, to wit, on the 28th day of September, 1898, there was filed in the clerk's office of said court a certain opinion by Judge Showalter; which said opinion is in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois, Northern Division.

JAMES NICOL	}	Petition for the Writ of <i>Habeas Corpus</i> .
v.		
JOHN AMES, Marshal, etc.		

SHOWALTER, *Circuit Judge*:

The first paragraph of section 6 of the revenue law of 1898 reads:

"SEC. 6. That on and after the first day of July, eighteen hundred and ninety eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party, who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule."

Of the Schedule A of the act the second paragraph reads:

"Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for
36 each one hundred dollars in value of said sale, or agreement of sale, or agreement to sell, one cent, and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, one cent: Provided, that on every sale or agreement of sale, or agreement to sell, as aforesaid, there shall be made and delivered by the seller to the buyer a bill, memorandum, or agree-

ment, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps, in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or any one who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, or agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof, as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamp affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court."

The petitioner, James Nicol, who is a citizen of Illinois and resides in Chicago, is a member of the commercial exchange known as the Board of Trade of the City of Chicago. On the second day of September, 1898, in the course of his business on said board of trade, Mr. Nicol, by oral contract, sold, for immediate delivery at the city of Chicago, to one James H. Milne, also a member of the said board of trade and a citizen of the State of Illinois, two car-loads of oats, being 2,289 bushels of oats, then in Chicago, at the price of twenty and three-quarters (20 $\frac{3}{4}$) cents per bushel and for the

37 total sum of \$474.98. Thereafter and on the 8th day of September, 1898, the attorney of the United States for the northern district of Illinois filed an information in the district court of the United States for said district reciting said sale, and reciting also that said petitioner had made the sale without making and delivering to the buyer any bill, memorandum, agreement, or other evidence of said sale showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it referred, as required by the statute last above quoted. Proceedings were afterwards had in said court, pursuant to said information, resulting in the conviction of said Nicol and the imposition upon him of a fine of five hundred dollars. Refusing to pay such fine and being in custody, he filed his petition in this court for a writ of *habeas corpus*, and he is brought here by the marshal in response to said writ. He insists that the statute of the United States upon which he was convicted, being that above quoted, is in violation of the national Constitution; that his detention is therefore unlawful, and that he should be discharged from the same.

38 A tax on a sale may mean a revenue charge or imposition by the Government on the liberty of alienation in general or on the liberty of making a sale under special and exceptional conditions. The statute provides that there shall be paid as a tax "upon each sale, agreement of sale, or agreement to sell, any pro-

ducts or merchandise at any exchange, or board of trade, or other similar place * * * for each one hundred dollars in value of said sale, or agreement of sale, or agreement to sell, one cent, and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, one cent." The sale referred to in this statute, being a sale of products or merchandise, must be made on an "exchange or board of trade" or at a "similar place," and the seller operating for the time being at such place or market must pay the tax. Dominion over the means of making a transfer or sale on a market which is known and established and provided with special safeguards and in a sense exclusive, rather than dominion over the thing sold for the mere purpose of alienation in general, is the subject-matter of the tax. The privilege of selling upon an exchange or board of trade may be thought of as distinct from

39 the product or merchandise there sold or from a sale—merely as a sale—there made. This privilege is itself a property or thing of value, and it is upon the privilege of selling "at any exchange or board of trade" whenever such privilege is made use of, and not upon the sale apart from the privilege, or upon the occupation or business of selling apart from the privilege, or upon the product sold, or upon the price received for it, that the tax is levied. This tax is paid by means of a stamp or stamps put on a written document required by the law to identify each transaction and to receive said stamp or stamps. The document is merely an instrumentality for collecting the tax. The tax, as said, is not in reality and legal effect upon the document, or upon the commodity sold, or upon the sale *per se*, or upon the occupation of selling, but upon the privilege of selling products or merchandise at an exchange or upon a board of trade, for, apart from this privilege, there is in the particular law here complained of no tax.

The privilege in question is taxed according to the use made of it. The tax is graduated in proportion to the magnitude of the deal or operation. On every occasion when the privilege is used

40 the owner thereof, himself conducting the sale, pays the tax.

If he sell for some one not a member of the exchange or board of trade he will still pay the tax, even though he collect the amount, or some portion of it, from his patron as a charge incidental to the service rendered, for while the privilege taxed is his own property, the patron or employer enjoys to some extent the benefit resulting from the use of the privilege, but this tax amounts in reality to an expense in transferring commodities from the producer to the ultimate consumer. The latter, in the last analysis, foots the bill; the tax is absorbed in the ultimate cost and the consumer eventually pays it. Therefore this tax, being a case of what may be called indirect taxation, is, as contended by petitioner, subject to the constitutional limitation of uniformity "throughout the United States," but this tax, in my judgment, falls within the rule of uniformity. That rule is met if a tax operates equally upon the specified subject-matter wherever and whenever found throughout the United States. It is for the law-making power to determine

41 the incidence of taxation—that is, upon what matters the tax shall be levied—as well as to provide the means or instrumentalities whereby the tax shall be collected. The tax in question applies whenever and wherever throughout the United States the privilege of selling products or merchandise on an exchange or board of trade or similar place is exercised, and it is graduated, as said, according to the use made of the privilege. That such a privilege is taxable seems to me plainly the teaching of the text books on taxation, nor do I understand that this proposition is or will be disputed by the learned counsel for this petitioner.

The point is urged that the method of collecting this tax is unconstitutional and in excess of the power of the national legislature, the reason given being that the law of the State on a matter within the exclusive cognizance of the State is violated—that is to say, the enactment complained of makes unlawful, it is said, an oral contract made in the course of intrastate as distinguished from interstate commerce. The offence for which this petitioner was fined was the neglect to make the memorandum specified in the statute. The sale of the oats by him was oral. He made no note or memorandum, as required. But the act does not ex-

42 pressly declare that the oral contract in such case shall be deemed unlawful and void, nor is it a question here whether this result follows as a legal consequence from what is declared. If, as is contended, Congress has not the power to make void the oral contract, then that contract is valid. Voidness or illegality in the oral contract itself is in that case no part of the penalty, but the fine for neglecting to make the note or memorandum remains. On this understanding the State law is not interfered with; the rights and liabilities of the parties by virtue of the oral contract remain, from the standpoint of the State law, precisely what they would have been if this national revenue enactment had not been made. On the other hand, if the power to make the oral contract void be in Congress, then the proposition that the oral contract is void as the necessary legal consequence of the neglect to make a written memorandum, as required in this law, would mean that said requirement is constitutional and valid.

The question here is not whether Congress had the power to make the oral contract void, but whether as a means or instrumentality for the collection of a valid tax that body could, under penalty of a fine, require the seller to identify the transaction by making a note of it and to pay the tax by stamping the note so made. The note indicated in the enactment calls for no details of the contract. The note, apparently, need not be subscribed. It need not show the name of the buyer or the time or times of payment, nor need it contain covenants of any kind, or recitals beyond a date, a name, "the amount of the sale and the matter or thing to which it refers." Nor, apart from the interest which the Government may have in enforcing the penalty for violating the revenue law, is the note necessarily subject to the inspection of any person other than the seller who makes and stamps it and the buyer to whom it is delivered. The writing required is merely such a tran-

sient memorial as will meet the purposes of the revenue. If on the occasion of each sale made in the exercise of the privilege of selling on an exchange or board of trade the seller will make, duly stamp, and deliver to the buyer this memorial, then the portion of the national revenue provided for in this law will be collected, and no results beyond this, hurtful or otherwise, will necessarily follow.

44 The memorandum, since it merely identifies the use of the privilege taxed, and receives the stamp which pays the tax, would seem to be appropriate as a means or instrumentality for collecting the tax. Whether entirely adequate or not, the means proposed, including the fine for not making or stamping the memorandum, are not invalid, nor is the tax itself invalid, simply because no other means, such as suit or action of some sort by some revenue officer beyond the mere sale of stamps, were provided.

Section 8 of article I of the national Constitution is an enumeration of powers vested in the Congress of the United States. The first in the list is the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." The tax here in question is obviously not a direct tax, to be apportioned among the States within the sense of paragraph 3 of section 2 or paragraph 4 of section 9 of said article I. Aside from the words "to pay the debts and provide for the common defense and general

45 welfare of the United States," upon which no point is made in the argument, the rule of uniformity is the only limitation upon the power of Congress to levy this tax. Counsel argues that this is in reality a tax on documents; that the memorandum called for in this act touching a sale on a board of trade or an exchange cannot be different in classification from such a memorandum touching a sale made elsewhere, and upon this ground he contends that the rule of uniformity is violated. He says, moreover, that petitioner was fined not for failing to affix a stamp to a document already extant, but for refusing to make the document, and besides the rule of uniformity he appeals to another rule, namely, that a tax can be levied only upon existing subjects, and that Congress cannot make it obligatory on the tax-payer to create or produce subjects merely that they may be taxed; but I do not concur with him in the view that this is a tax on documents. The document is made in order that it may receive the stamp; but the stamp does not pay a tax on the document. The document is merely the convenient instrumentality whereby the tax may be collected.

After the enumeration in section 8 successively of various powers vested in the Congress of the United States there follows
46 this power: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." Upon levying this tax it was for Congress to select the means which that body deemed "necessary and proper" for collecting the same. Even if in some enactment for carrying into effect a power clearly

given by the Constitution of the United States Congress should ignore or annul an existing State law, this would not make such enactment invalid, provided the means proposed therein were "necessary and proper," as recited in the constitutional provision last above quoted; but the particular statute here in question and upon which this petitioner was convicted does not, as explained above, necessarily interfere with any State law. Defining the words "necessary and proper," Chief Justice Marshall, in *McCullough v. State of Maryland*, 4 Wheaton, 316, 420, 421, said:

"We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended; but we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers which it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

I think the tax here in question is not in violation of the rule of uniformity, and that the provision here complained of, considered as a means for collecting the tax, was appropriate and plainly adapted to that end, and that such a means is not prohibited by the Constitution or inconsistent with the letter and spirit of that instrument.

It has been said in the course of this opinion that this is a case of indirect taxation, being an excise tax within the meaning of the words "but all duties, imposts, and excises shall be uniform throughout the United States." The income-tax decision, *Pollock v. Farmers' Loan & Trust Company*, 158 U. S., 617, 635, 637, went on the distinction between direct and indirect taxation. The Chief Justice, in delivering the opinion of the court, said:

"We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such."

And, again, "We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property or the income thereof might not also lay excise taxes on business, privileges, employments, and vocations," meaning, as I understand, that such taxes are to be deemed indirect—that is to say, not subject to the rule of apportionment, but only to that of uniformity.

The writ of *habeas corpus* is discharged and the petitioner remanded to the custody of the marshal.

(Endorsed :) Filed Sep. 28, 1898. S. W. Burnham, clerk.

49 Afterwards, to wit, on the seventh day of October, in the July term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of JAMES NICOL for *Habeas Corpus*.

This cause coming on for a final hearing upon the petition herein and return of the respondent hereto, and the court having heard the argument of counsel and being fully advised in the premises, the court finds and adjudged that the commitment and imprisonment of the petitioner under the warrant of *habeas corpus* in this case are sufficient cause and return in law for his detention by said marshal; therefore—

It is ordered by the court that the writ of *habeas corpus* allowed in this case be dismissed, and that the prisoner be remanded and continued in the custody of such marshal under such his arrest and commitment by the aforesaid process referred to in the return of said marshal, and that the respondent have and recover from the petitioner herein the costs by him incurred in this matter; to which the petitioner duly excepts.

Thereupon said petitioner, James Nicol, having presented to and filed in said court his assignments of errors and petition for appeal from this order to the Supreme Court of the United States—

It is further ordered that said appeal be allowed upon said petitioner's filing his appeal bond in the penal sum of three hundred dollars, to be approved by this court.

It is further ordered that upon said Nicol filing his appeal bond as aforesaid the order or judgment appealed from herein be, and the same is hereby, superceded until the final decision of the Supreme Court upon said appeal, and the said James Nicol be not taken into custody upon his filing in this court a recognizance and bail
50 bond, with surety, in the sum of one thousand dollars, conditioned for his appearance to answer the judgment of said Supreme Court upon said appeal.

Thereupon the said James Nicol presents in open court his appeal bond, and it is ordered that the same stand approved, and that the clerk of this court send up to the October term, A. D. 1898, of the Supreme Court of the United States a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings to such cause.

51 On the same day, to wit, on the seventh day of October, 1898, came James Nicol, by his attorney, and filed in the clerk's office of said court his petition for appeal; which said petition for appeal is in the words and figures following, to wit:

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of JAMES NICOL for *Habeas Corpus*.

And now comes the petitioner, James Nicol, and deeming himself aggrieved by the judgment or order of this court entered the seventh day of October, 1898, herewith presents his assignments of errors and prays that an appeal may be allowed from said order to the Supreme Court of the United States, and that a transcript of the records and proceedings upon which said judgment was made may be sent, duly authenticated, to the Supreme Court of the United States.

JAMES NICOL,
By HENRY S. ROBBINS,
His Attorney.

(Endorsed :) Filed Oct. 7, 1898. S. W. Burnham, clerk.

On the same day, to wit, the seventh day of October, 1898, came James Nicol, by his attorney, and filed in the clerk's office of said court his assignments of error; which assignments of error are in words and figures following, to wit:

52 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of JAMES NICOL for *Habeas Corpus*.

And now comes the petitioner, James Nicol, and, for the purpose of appeal from the order entered herein to the Supreme Court of the United States, hereby assigns the following errors upon the record of this cause:

First. That the circuit court erred in dismissing the petition and writ of *habeas corpus* and remanding the petitioner to the custody of the marshal.

Second. That the circuit court erred in not sustaining said petition and discharging said petitioner from arrest.

Third. That the circuit court erred in not holding that part of the act of Congress approved June 13, 1898, and entitled "An act to provide ways and means to meet war expenditures and for other purposes," upon which said petitioner was convicted, unconstitutional, and in not adjudging said petitioner, by reason thereof, entitled to his discharge.

Wherefore said petitioner prays that said decree, judgment, or order may be reversed and said circuit court be directed to enter an order discharging said petitioner.

JAMES NICOL,
By HENRY S. ROBBINS,
His Attorney.

53 On the same day, to wit, the seventh day of October, 1898, came James Nicol, as principal, and *and* Henry S. Robbins, as surety, and filed in the clerk's office of said court an appeal bond; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, James Nicol, as principal, and Henry S. Robbins, as *sureties*, are held and firmly bound unto the United States of America in the full and just sum of three hundred dollars, to be paid to the said The United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a circuit court of the United States of America for the northern district of Illinois, in a suit depending — said court, *between* in the matter of the petition of James Nicol for a writ of *habeas corpus*, a judgment was rendered against the said James Nicol dismissing the writ of *habeas corpus* theretofore issued therein, and the said James Nicol having obtained an appeal to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 5 days from the date thereof:

Now, the condition of the above obligation is such that if the said James Nicol shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good,
54 then the above obligation to be void; else to remain in full force and virtue.

JAMES NICOL. [SEAL.]
HENRY S. ROBBINS. [SEAL.]

Approved by—
— — —

(Endorsed:) Filed Oct. 7, 1898. S. W. Burnham, clerk.

55 NORTHERN DISTRICT OF ILLINOIS, { ss:
Northern Division,

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all the proceedings had in said court in the matter of the petition of James Nicol for writ of *habeas corpus* as the same appear from the original records and files of said court now remaining in my custody and control.

Seal of Circuit Court
U.S., Northern Dist.
Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, in said district, this eighth day of October, 1898.

S. W. BURNHAM, Clerk.

56 UNITED STATES OF AMERICA, ss :

To the United States of America, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 5 days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, northern division, wherein James Nicol, the petitioner, is appellant and The United States of America, respondent, is the appellee, to show cause, if any there be, why the judgment rendered against the said appellant in error, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Showalter, circuit judge, this seventh day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

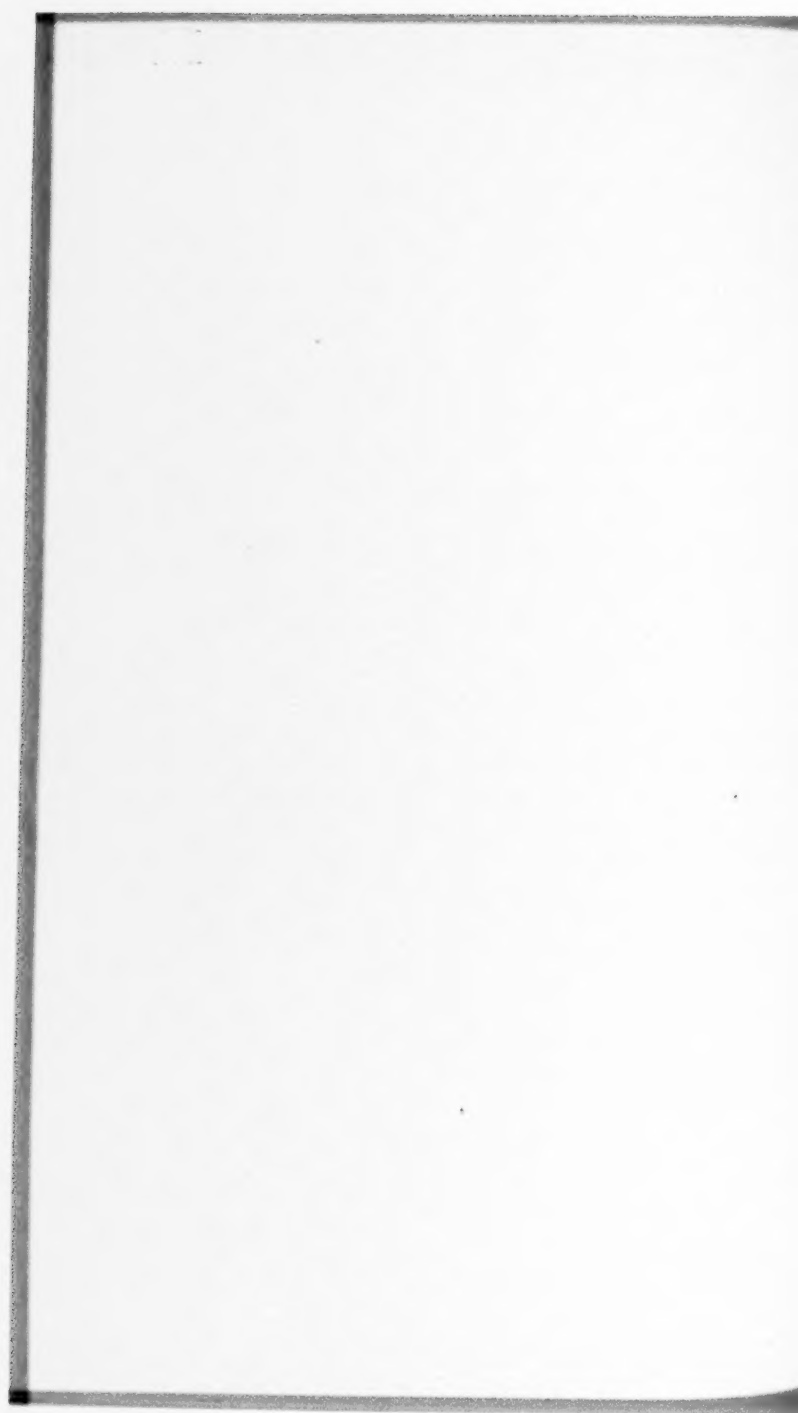
JOHN W. SHOWALTER,
Circuit Judge, U. S. Circuit Court, Northern District Ills.

Filed Oct. 8, 1898.

S. W. BURNHAM, *Clerk.*

57 [Endorsed:] Rec'd Chicago, Oct. 8, 1898, at 11.20 o'clock a. m.
John C. Black, U. S. att'y, N. D. Ills.

Endorsed on cover: Case No. 17,020. N. Illinois C. C. U. S. Term No., 435. James Nicol, appellant, vs. John Ames, United States marshal for the northern district of Illinois. Filed October 12th, 1898.



TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 625.

EDWIN S. SKILLEN, APPELLANT.

vs.

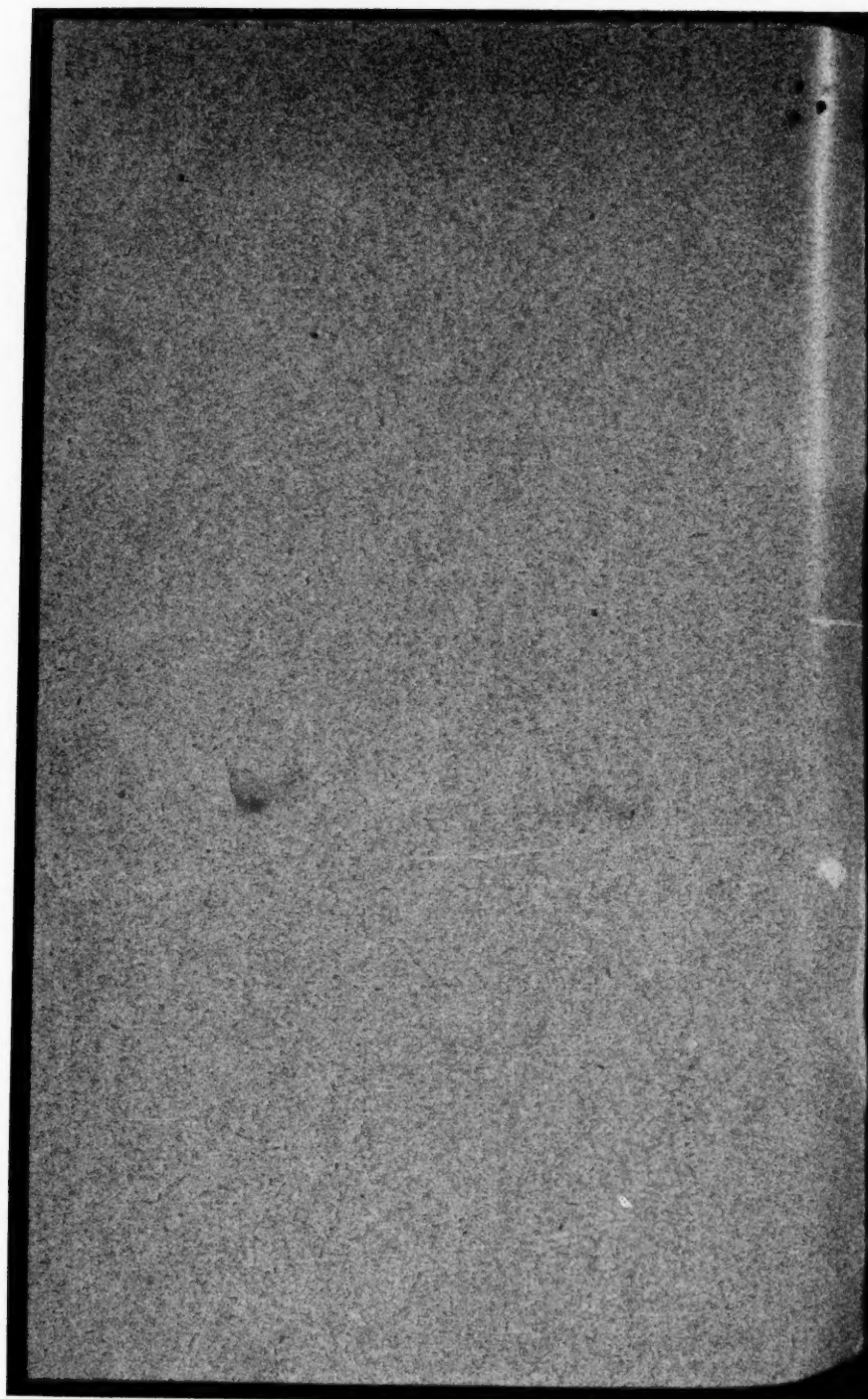
JOHN C. AMES, UNITED STATES MARSHAL FOR THE
NORTHERN DISTRICT OF ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 6, 1905.

(17,210.)

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(17,210.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 625.

EDWIN S. SKILLEN, APPELLANT,

*vs.*JOHN C. AMES, UNITED STATES MARSHAL FOR THE
NORTHERN DISTRICT OF ILLINOIS.APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Bond for costs ..	2	1
Petition for writ of <i>habeas corpus</i>	3	2
Exhibit A—Commitment	9	5
B—Record in case of U. S. vs. Skillen.....	11	6
Order filing information.....	12	6
Information	13	7
Affidavit of Frank Harlow.....	16	8
Order for bench warrant	18	9
Bench warrant and return.....	18	10
Motion to quash.....	20	11
Order overruling motion to quash.....	21	11
Demurrer	22	12
Order overruling demurrer.....	23	12
Trial and verdict.....	24	13
Order overruling motion for new trial.....	25	13
Motion in arrest of judgment.....	26	13
Order overruling motion in arrest of judgment....	27	14
Judgment and sentence.....	27	14
Clerk's certificate.....	28	15

	Original.	Print.
Order taking petition under advisement and enlarging petitioner on bail	29	15
Writ of <i>habeas corpus</i>	30	16
Marshal's return	31	16
Bail bond	32	17
Order dismissing petition, &c.	35	18
Order allowing appeal, &c.	35	18
Petition for appeal	37	19
Assignment of errors	37	19
Appeal bond	39	20
Citation	40	21
Acceptance of service of citation	41	21
Clerk's certificate	42	21

1 Pleas in the circuit court of the United States for the northern district of Illinois, northern division, begun and held at the United States court-room, in the city of Chicago, in said district and division, before the Honorable William H. Seaman, district judge of the United States for the eastern district of Wisconsin, by assignment sitting as circuit judge for the northern district of Illinois, on Saturday, the third day of December, being one of the days of the regular July term of said court, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third year.

S. W. BURNHAM, *Clerk*.

Petition.

In the Matter — the Petition of EDWIN S. SKILLEN for Writ of *Habeas Corpus*. 25008.

Be it remembered that on this day, to wit, the third day of December, 1898, came Edwin S. Skillen, by his attorney, and filed in the clerk's office of said court his bond for costs and petition for writ of *habeas corpus*; which said bond and petition are respectively in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

Circuit Court, October Term, A. D. 1898.

EDWIN S. SKILLEN
vs.
JOHN C. AMES, as Marshal. } In —.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the petitioner of any costs ordered or adjudged to be paid by him hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against him.

Dated this 3rd day of December, A. D. 1898.

HENRY S. ROBBINS,
Residence, 414 N. State St., Chicago.

I, Henry S. Robbins, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate situate in the northern district of Illinois the sum of four hundred dollars over and above my just debts and liabilities.

HENRY S. ROBBINS.

Sworn to and subscribed before me this 3rd day of December,
A. D. 1898.

[SEAL.]

GEORGE DAY McBIRNEY,
Notary Public.

3

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division,

To the circuit court of the United States for said district and division:

Your petitioner, Edwin S. Skillen, of the city of Chicago and State of Illinois, complaining, shows that he is unjustly and unlawfully detained and imprisoned by John Ames, United States marshal for the northern district of Illinois, at the city of Chicago and State of Illinois, by virtue of the warrant of commitment, a copy of which is hereto annexed as "Exhibit A;" which order was issued under the following circumstances:

Your petitioner is a citizen of the United States and has been a citizen of the State of Illinois for over thirteen years, and at the time of the grievances herein complained of had never been in the military or naval services of the United States; that your petitioner has, for some years prior to the second day of November, 1898, been a member of the Chicago board of trade, a commercial exchange duly incorporated by a special act of the legislature of the State of Illinois approved February 18, 1859.

That said association owns and occupies in the city of Chicago an exchange building, where its members meet daily (except Sundays and holidays), between certain business hours, for the purpose of buying and selling flour, wheat, corn, oats, rye, barley, hay, straw, flaxseed, grass seed, field seed, pork in all its forms, meats, lard, and other food products, and for the transaction of such other business as is incident thereto; that among its members there are some whose business it is to purchase in the country or receive on consignment from persons in the country some or all of the foregoing articles and sell the same upon said board of trade, and there are other members of said association whose business it is to buy upon said exchange some or all of said articles of merchandise either for themselves or on commission and to deliver or ship the same to consumers or distributors throughout this country and Europe, and that the sales and contracts for sales of said merchandise so made upon said board of trade are identical in their character with all other sales and contracts for sales of the same kind of merchandise so made in the city of Chicago and elsewhere throughout the United States and other places than on such exchanges, boards of trade, or other similar places.

That on the second day of November, 1898, in the course of his business on said board of trade, your petitioner made a certain oral agreement with Frank Harlow, also a citizen of Illinois and a member of said board of trade, to sell to his firm of F. Harlow & Company five thousand bushels of corn at thirty-two cents per bushel, or \$1,600, to be delivered on any day in the month of December

next that your petitioner should select, and that thereafter, on the 25th day of November, 1898, said F. Harlow & Company agreed to sell your petitioner a like five thousand bushels of corn, at thirty-three cents per bushel, to be delivered on any day in the month of December next that said Harlow & Company should select, and that thereafter, as is the general custom in such cases on the Chicago board of trade, the two said sales were offset and settled by the payment by your petitioner to said Harlow & Company of the sum of fifty dollars, being the difference between said price at which your petitioner had sold and the price at which he had bought back said corn, your petitioner never having owned or had the corn referred to in said agreement to sell nor any corn applicable to or for the purpose of delivery under your petitioner's said agreement, to sell, and thereafter, on, to wit, the second

5 day of December, 1898, John C. Black, Esquire, as the United States attorney for the northern district of Illinois, presented to and with leave of said court filed in the district court of the United States for the northern district of Illinois, northern division, a certain information and affidavit reciting said agreement by your petitioner to sell five thousand bushels of corn, and also reciting that your petitioner had made such agreement to sell without then and there making and delivering to said buyer any bill, memorandum, agreement, or other evidence of said agreement to sell, showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it referred, as required by the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes;" and thereupon said court upon said petition ordered a bench warrant to issue against your petitioner, whereon your petitioner was brought into said court, and said information being read to him interposed a motion to quash the same upon the ground that that part of said act of Congress approved June 13, 1898, upon which said information is based is unconstitutional and void, but said district court entered an order denying said motion and requiring your petitioner to plead to said information; whereupon your petitioner interposed a demurrer to said information upon the ground that that part of said act of Congress approved June 13, 1898, upon which said information is based is unconstitutional and void, and that for that reason said information did not charge an offense or crime against the laws of the United States; but said court overruled said demurrer, and whereupon your petitioner was arraigned upon said information and thereupon entered his plea of

6 not guilty, and said case having proceeded to trial, and a jury having been empanelled, a verdict was rendered by it finding the defendant guilty as charged in said information; whereupon your petitioner successively entered his motion for a new trial and in arrest of judgment, which were successively overruled; and thereupon said court entered its sentence and judgment of conviction, wherein it imposed upon your petitioner a fine of five hundred dollars, and committed your petitioner to the county jail of Cook county, State of Illinois, until said fine and costs should be

paid, but suspending execution of said sentence until December 3rd, 1898, at 9 o'clock a. m., a copy of which said affidavit, information, motion to quash, demurrer, motions for a new trial and in arrest of judgment, orders, sentence, and judgment of conviction, being the entire record of said case in said court, are annexed hereto and made a part hereof as "Exhibit B."

And thereupon said order of commitment coming to the hands of said marshal, and your petitioner not having paid said fine and costs as therein required, said marshal, after the hour of 9 o'clock a. m. on the 3rd day of December, 1898, took your petitioner into his custody under said warrant and now has your petitioner in his custody and is now in the act of transporting him to said jail specified in said commitment.

And your petitioner claims that he is restrained and deprived of his liberty, as above stated, unlawfully, and that that part of said act of Congress approved June 13, 1898, upon which said information is based is unconstitutional and void for the following reasons and others:

First. Because it is outside of the power of Congress and exclusively within the legislative power of the several States to
7 prescribe whether contracts made within such States shall be made orally or shall be evidenced by written memoranda.

Second. Because the tax in supposed aid of which that part of said act of Congress upon which said information is based was enacted is contrary to the Constitution of the United States, in that it is not uniform throughout the United States, and hence said information does not charge an offense or crime under or by virtue of the laws of the United States, and that said district court for the northern district of Illinois, northern division, in so trying and committing to jail your petitioner, as aforesaid, acted wholly without jurisdiction or legal authority so to do, and said order under which your petitioner is held in custody is wholly void.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said John Ames, United States marshal for the northern district of Illinois, may issue at once in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require, and that a writ of certiorari, if necessary, may also be issued to the clerk of the district court for the northern district of Illinois, northern division, commanding him to transmit at once to this court a full, complete, and true transcript of said cause and pleadings wherein your petitioner has been convicted and is detained, as aforesaid.

EDWIN S. SKILLEN.

HENRY S. ROBBINS,
Counsel for Petitioner.

8 UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

Edwin S. Skillen, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him;

that he has read the same and knows the contents thereof, and that the statements therein made are true.

EDWIN S. SKILLEN.

Subscribed and sworn to before me this 3rd day of December, A. D. 1898.

[SEAL.]

WIRT E. HUMPHREY,
*United States Commissioner for
Northern District of Illinois.*

9

"EXHIBIT A."

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

The President of the United States of America to the marshal of the northern district of Illinois, Greeting:

Whereas Edwin S. Skillen appeared before the district court of the United States for the northern district of Illinois on the second day of December, 1898, to answer an information filed herein against him for having on November 2nd, 1898, with intent to evade certain provisions of the act of Congress of June 13, 1898, known as the war revenue law of 1898, made a sale of merchandise on the Chicago board of trade to one Frank Harlow without making and for having unlawfully failed to make a memorandum of the said sale as required by law aforesaid, and the said Edwin S. Skillen, upon hearing in due form of law, having been found guilty as charged in the said information, and having on that day been sentenced to pay a fine of five hundred dollars and the costs of court and to imprisonment in the county jail of Cook county, Illinois, until the same should be paid (which said sentence the said court directed should not be executed until the 3rd day of December, 1898):

Now, therefore, you are hereby commanded to commit the said Edwin S. Skillen to the county jail of Cook county, Illinois, to be there safely kept until said fine and costs are paid, or he is otherwise discharged by due process of law.

Witness the Hon. Peter S. Grosscup, judge of the district court of the United States of America, at Chicago aforesaid, this [SEAL.] 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123rd year.

T. C. MacMILLAN,
*Clerk United States District Court,
Northern District of Illinois.*

10 NORTHERN DISTRICT OF ILLINOIS, }
Northern Division, } ss:

I, T. C. MacMillan, clerk of the district court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the commitment

issued our of and under the seal of said court on the 2nd day of December, A. D. 1898, in the cause wherein The United States of America is the plaintiff and Edwin S. Skillen the defendant, as the same appears from the original now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office in Chicago, in said district, this 3rd day of December, A. D. 1898.

T. C. MACMILLAN, *Clerk*,
By C. R. PICKARD,
Deputy Clerk.

11

EXHIBIT B.

Pleas had at a regular term of the district court of the United States of America for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the 1st Monday of July, it being the 4th day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third year.

12

THE UNITED STATES	}	Vio. Int. Rev. Laws.
vs.		
EDWIN S. SKILLEN.		

Be it remembered that heretofore, to wit, on the second day of December, A. D. 1898, it being one of the days of the July term of the district court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the 1st Monday of July, it being the 4th day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third year, before the Honorable Peter S. Grosscup, judge of said court, presiding; John C. Ames, United States marshal for said district, and T. C. MacMillan, clerk of said court, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES	}	2987. Vio. Int. Rev. Laws.
vs.		
EDWIN S. SKILLEN.		

Comes John C. Black, Esq., district attorney, and presents an information against Edwin S. Skillen, the defendant herein, charging the said Edwin S. Skillen with violating section 25 of the act of Congress of June 13, 1898, and asks leave of the court to file the same; whereupon it is ordered by the court that said information be filed and the cause placed upon the dockets of this court.

And afterwards, to wit, on the second day of December, A. D. 1898, said information was filed, the same being in the words and figures following, to wit:

- 13 In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the October Adjourned Term, in the Year Eighteen Hundred and Ninety-eight.

NORTHERN DISTRICT OF ILLINOIS, }
Northern Division, } *set*:

Be it remembered that John C. Black, attorney of the United States of America for the northern district of Illinois, who for the said United States in this behalf prosecutes, in his own person comes here into the district court of the said United States for the division and district aforesaid, on this second day of December, in this same term, and for the said United States gives the court here to understand and be informed that Edwin S. Skillen, late of the city of Chicago, in the said division and district, on the second day of November, in the year of our Lord eighteen hundred and ninety-eight, at Chicago aforesaid, in the division and district aforesaid, upon the Chicago board of trade, with intent then and there on the part of him, the said Edwin S. Skillen, to evade the provisions in that behalf in the act of Congress approved June 13, 1898, and entitled "An act to provide ways and means to meet war expenditures, and for other purposes," did make with one Frank Harlow, of the same city, and of the firm of F. Harlow & Company, a certain agreement to sell to him, the said F. Harlow & Company, for delivery during the then ensuing month of December, on such day thereof as the said Edwin S. Skillen should select, five thousand bushels of corn, at a price of thirty-two cents per bushel, and for a total sum of sixteen hundred dollars, without there and then, to wit, at the time of the making of the said agreement, or afterwards, making and delivering to the said Frank

- 14 Harlow or to the said F. Harlow & Company any bill, memorandum, or other evidence of said agreement, showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it referred, as required by law, and without then or thereafter owning or having in his possession the corn referred to in said agreement or any corn applicable thereto or for the purpose of delivery thereon, and that thereafter, to wit, on the twenty-fifth day of November, in the same year, the said F. Harlow & Company did make with the said Edwin S. Skillen an agreement to sell to him, the said Edwin S. Skillen, for delivery during the then next ensuing month of December, and on such day of that month as the said F. Harlow & Company should select, five thousand bushels of corn, at a price of thirty-three cents per bushel, and for a total sum of sixteen hundred and fifty dollars; and that thereupon, and in accordance with the general custom in such cases on the said board of trade, the two above-mentioned agreements to sell were offset and settled by the payment by the said

Edwin S. Skillen to the said F. Harlow & Company of the sum of fifty dollars, being the difference between the selling prices of the said agreements.

And so the said attorney of the said United States, who prosecutes as aforesaid, does say that the said Edwin S. Skillen, on the said second day of November, in the year aforesaid, at Chicago aforesaid, in the division and district aforesaid, in manner and form aforesaid, upon a certain board of trade there, with the intent in that behalf aforesaid, unlawfully did make an agreement to sell certain products and merchandise for future delivery, of sixteen hundred dollars in value, and unlawfully did fail and refuse to make and deliver to the seller any bill, memorandum, or other evidence of the said agreement, showing the date thereof, the name of the seller, the amount,

and value of the said sale and agreement, and the matter or
15 thing to which it referred, and unlawfully did fail, neglect, and refuse to make and deliver to the seller any such bill, memorandum, or other evidence as required by law, he, the said Edwin S. Skillen, then and there being the person liable to pay the internal-revenue tax then accruing to the said United States upon the said agreement under the law aforesaid, against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

Whereupon the said attorney of the said United States, who prosecutes, as aforesaid, for the said United States, prays the consideration of the court here in the premises, and that due process of law may be awarded against him, the said Edwin S. Skillen, in this behalf to make him answer to the said United States concerning the premises aforesaid.

JOHN C. BLACK,
United States Attorney.

Endorsed: No. 2987. District court, criminal, N. div. The United States *vs.* Edwin S. Skillen. Information on section 25, act of June 13, 1898 (internal-revenue laws). John C. Black, U. S. att'y, N. dist. Ills.

And afterwards, to wit, on the second day of December, A. D. 1898, the affidavit of Frank Harlow was filed in said court, said affidavit being in the words and figures following, to wit:

16 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

Frank Harlow, being duly sworn, deposes and says that he is a citizen of the State of Illinois, and that on the 2nd day of November, 1898, upon the Chicago board of trade, in the city of Chicago, Edwin S. Skillen, of the city of Chicago, a citizen of the State of Illinois and also a member of said board of trade, made with this deponent, for the firm of F. Harlow & Company, of which this deponent is a member, a certain agreement to sell to said F. Harlow & Company five thousand bushels of corn at thirty-two cents per

bushel, or sixteen hundred dollars, to be delivered thereafter on any day in the month of December next that said Skillen should select, without the said Skillen then or subsequently delivering to this deponent or said firm any bill, memorandum, agreement, or other evidence showing the date of said agreement to sell, the name of the seller, the amount of the sale, or the matter or thing to which it referred.

That thereafter and on the 25th day of November, 1898, said F. Harlow & Company agreed to sell to said Skillen a like five thousand bushels of corn at thirty-three cents per bushel, to be delivered on any day during the month of December next that said Harlow & Company should select, and that thereafter, as is the general custom in such cases on the Chicago board of trade, the two said sales were offset and settled by the payment by said Skillen to said Harlow & Company of the sum of fifty dollars, being the difference between said price at which said Skillen had sold and the price at which he had bought back said corn, and in said transaction said Harlow & Company did not and, as this affiant is informed and believes, said Skillen did not ever own or have the corn referred to in said agreement to sell or any corn applicable to or for the purpose of delivery thereon.

And further deponent sayeth not.

FRANK HARLOW.

Subscribed and sworn to before me this 2nd day of December, A. D. 1898.

[SEAL.]

WIRT E. HUMPHREY,
*United States Commissioner for the
Northern District of Illinois.*

Endorsed: No. 2987. District court, criminal, N. div. The United States *vs.* Edwin S. Skillen. Affidavit of Frank Harlow. John C. Black, U. S. att'y, N. dist. Ills.

18 And afterwards, to wit, on the 2nd day of Dec., A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge presiding, to wit:

THE UNITED STATES	} 2987. Vio. Int. Rev. Laws.
<i>vs.</i>	
EDWIN S. SKILLEN.	

Comes John C. Black, Esq., district attorney, and on his motion it is ordered by the court that a bench warrant be awarded for Edwin S. Skillen, the defendant herein.

And afterwards, to wit, on the 2nd day of December, A. D. 1898, a bench warrant was issued out of and under the seal of said court, directed to the marshal of the northern district of Illinois, to serve on the defendant, Edwin S. Skillen; which said bench warrant is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, ss :

District Court of the United States of America, Northern District of Illinois.

To the marshal of the northern district of Illinois, Greeting :

We command you to take Edwin S. Skillen, if he shall be found in your district, and him safely keep, so that you have his body before our judge of our district court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, forthwith to answer unto the United States of America in an information pending in said court against him for violating the internal-revenue laws of the United States; and have you then and there this writ, with your return thereon.

Witness the Hon. Peter S. Grosscup, judge of the district court of the United States of America, at Chicago aforesaid, this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123rd year.

T. C. MacMILLAN, *Clerk*. [SEAL.]

Endorsed : No. 2987. District court of the United States, northern district of Illinois. United States of America vs. Edwin S. Skillen. Bench warrant, returnable forthwith. T. C. MacMillan, clerk.

And afterwards, to wit, on the 2nd day of December, A. D. 1898, said bench warrant was returned and filed, with the marshal's return thereon endorsed in the words and figures following, to wit :

I have duly executed this writ within my district by arresting the within-named defendant, Edwin S. Skillen, at Chicago, Ills., at 12 o'clock m. December 2nd, 1898, and took him before the Honorable Peter S. Grosscup, judge.

JOHN C. AMES,
U. S. Marshal, Nor. Dist. Ill.

Fees, —.

Endorsed : Returned and filed this 2nd day of December, A. D. 1898. T. C. MacMillan, clerk.

And afterwards, to wit, on the 2nd day of December, A. D. 1898, comes the defendant, by his attorney, and files in said court a motion to quash the information filed herein, said motion being in the words and figures following, to wit :

20 In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

UNITED STATES
vs.
EDWIN S. SKILLEN. } 2987.

Now comes the defendant, Edwin S. Skillen, in person and by Henry S. Robbins, his attorney, and moves the court to quash the information filed herein upon the ground that it does not charge a crime against or under the laws of the United States, for the reason that that part of the act of Congress referred to in said stipulation, upon which said information is based, is unconstitutional and void.

Wherefore the defendant prays that said information may be quashed.

EDWIN S. SKILLEN,
By HENRY S. ROBBINS,
His Attorney.

Endorsed: No. 2987. U. S. district court. United States vs. Edwin S. Skillen. Motion to quash. Filed in open court this 2nd day of December, A. D. 1898. T. C. MacMillan, clerk. Henry S. Robbins, Home Insurance building, Chicago.

21 And afterwards, to wit, on the 2nd day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge presiding, to wit:

THE UNITED STATES
vs.
EDWIN S. SKILLEN. } 2987. Vio. Int. Rev. Laws.

Come the parties, by their attorneys, and the defendant in his own proper person, and the defendant, by his counsel, moves the court to quash the information filed herein against him; whereupon, after due consideration, it is ordered by the court that the said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 2nd day of December, A. D. 1898, comes the defendant, by his counsel, and files in said court a demurrer to the information filed herein against him, said demurrer being in the words and figures following, to wit:

- 22 In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

UNITED STATES }
vs. }
EDWIN S. SKILLEN. }

And now comes the said Edwin S. Skillen, by Henry S. Robbins, his attorney, and, having heard the said information read, he says that the United States ought not to impeach or implead him, the said Edwin S. Skillen, by reason of the premises in the said information named and specified, because he says that the said information and the matters therein contained are not sufficient in law, and that he need not nor is he obliged by the law of the land to answer thereto, and for ground of demurrer the said defendant avers that that part of the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," upon which said information is based, is unconstitutional and void, and hence said information does not charge an infringement of or crime against the laws of the United States; and this he is ready to verify.

Wherefore and because of the insufficiency of said information the said Edwin S. Skillen prays judgment, and that he may be dismissed and discharged by the court here of and from the premises above charged upon him in form aforesaid.

HENRY S. ROBBINS,
Attorney for Defendant.

Endorsed: No. 2987. U. S. district court. United States vs. Edwin S. Skillen. Demurrer. Filed in open court this 2nd day of December, A. D. 1898. T. C. MacMillan, clerk. Henry S. Robbins, Home Insurance building, Chicago.

- 23 And afterwards, to wit, on the 2nd day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosseup, judge presiding, to wit:

THE UNITED STATES }
vs. } 2987. Vio. Int. Rev. Laws.
EDWIN S. SKILLEN. }

This cause coming on to be heard upon the demurrer of the defendant to the information filed herein against him, come the parties, by their attorneys, and the defendant in his own proper person, and after hearing the arguments of counsel it is ordered by the court that the said demurrer be, and the same is hereby, overruled.

- 24 And afterwards, to wit, on the 2nd day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosseup, judge, to wit:

THE UNITED STATES }
 vs. } 2987. Vio. Int. Rev. Laws.
 EDWIN S. SKILLEN. }

Come the parties, by their attorneys, and the defendant in his own proper person, and, being arraigned upon the information filed herein against him, the defendant pleads not guilty thereto and for his defense puts himself upon the country; whereupon comes a jury of good and lawful men, to wit, John C. Turner, James M. Barnes, John Barton, James T. Walsh, M. T. Trowbridge, Henry F. Tallman, George A. Root, J. M. Rhodes, D. M. Roach, Edward A. Palmer, Willard Osborne, and Jacob D. Wilbur, who are duly elected, empaneled, and sworn herein a true verdict to render according to the evidence, who, after listening to the evidence by the parties adduced, arguments of counsel, and charge of the court, retire to their room to consider of their verdict, and afterwards return into court and render their verdict, and upon their oath do say: We, the jury, find the defendant guilty as charged in the information; whereupon the defendant, by his counsel, moves the court for a new trial of this cause.

25 And afterwards, to wit, on the 2nd day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge presiding, to wit:

THE UNITED STATES }
 vs. } 2987. Vio. Int. Rev. Laws.
 EDWIN S. SKILLEN. }

This cause coming on to be heard upon the motion of the defendant for a new trial hereof, come the parties, by their attorneys, and the defendant in his own proper person, and after arguments of counsel and due consideration it is ordered by the court that the said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 2nd day of December, A. D. 1898, a motion in arrest of judgment upon the finding herein was filed in said court, said motion being in the words and figures following, to wit:

26 In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the July Term, in the Year Eighteen Hundred and Ninety-eight.

UNITED STATES }
 vs. }
 EDWIN S. SKILLEN. }

Now comes Edwin S. Skillen, by Henry S. Robbins, his attorney, and moves the court in arrest of judgment on the finding herein, and in support of said motion alleges that said information does

not charge or set forth a crime against or under the laws of the United States for the reason that that part of the act of Congress upon which said information is based is unconstitutional and void.

Therefore the defendant prays that judgment be not entered on the finding herein.

EDWIN S. SKILLEN,
By HENRY S. ROBBINS,
His Attorney.

Endorsed: No. 2987. U. S. district court. United States vs. Edwin S. Skillen. Motion in arrest. Filed in open court this 2nd day of December, A. D. 1898. T. C. MacMillan, clerk. Henry S. Robbins, Home Insurance building, Chicago.

27 And afterwards, to wit, on the 2nd day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge presiding, to wit:

THE UNITED STATES }
vs. } 2987.
EDWIN S. SKILLEN. }

This cause coming on to be heard upon the motion of the defendant in arrest of the judgment of the court herein, come the parties, by their attorneys, and the defendant in his own proper person, and after arguments of counsel and due consideration it is ordered by the court that the said motion be, and the same is hereby, overruled; to which the defendant duly excepted.

And afterwards, to wit, on the 2nd day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge presiding, to wit:

THE UNITED STATES }
vs. } 2987. Vio. Int. Rev. Laws.
EDWIN S. SKILLEN. }

Come the parties, by their attorneys, and the defendant in his own proper person, to have the sentence and judgment of the court pronounced upon him, he having heretofore, to wit, on the 2nd day of December, A. D. 1898, one of the days of this term of this court, been adjudged guilty in due form of law, as charged in the information filed herein against him, and being asked by the court if he had anything to say why the sentence and judgment of the court should not be pronounced upon him, and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered by the court, and as the sentence and
28 judgment of the court upon the findings of guilty so rendered herein, as aforesaid, that the defendant, Edwin S. Skillen, forfeit and pay to the United States a fine in the sum of five hundred dollars, besides the costs in this behalf expended.

It is further ordered by the court that the said defendant stand

committed to the county jail of Cook county, Illinois, until said fine and costs are paid or he is otherwise discharged by law.

For good cause shown it is ordered by the court that execution of the sentence and judgment herein be, and the same is hereby, suspended until Saturday, December 3rd, 1898, at nine o'clock a. m.

NORTHERN DISTRICT OF ILLINOIS, }
Northern Division. }

I, T. C. MacMillan, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the proceedings had in said court in the case of The United States vs. Edwin S. Skillen, as the same appears from the records and files of said court now remaining in my custody.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 3rd day of December, A. D. 1898.

T. C. MACMILLAN, Clerk,
By C. R. PICKARD,
Deputy Clerk.

(Endorsed :) Filed December 3, 1898. S. W. Burnham, clerk.

29 And on, to wit, the third day of December, in the July term of said court, 1898, in the record of proceedings thereof in said entitled cause before the Hon. William H. Seaman, district judge, appears the following entry, to wit :

In the Matter of the Petition of EDWIN S. SKILLEN for a Writ of *Habeas Corpus*.

Now, on this day, comes the petitioner, by his attorney, and by leave of court files his petition herein, and thereupon it is ordered that a writ of *habeas corpus* issue instant, returnable forthwith ; and now comes the marshal of this district, by John C. Black, Esq., his attorney, and makes return to said writ by personally bringing said Edwin S. Skillen before the court and presenting the record of the judgment upon which said detention is based ; and now comes on to be heard the motion of said petitioner to be discharged under said writ, and the said Edwin S. Skillen being personally present, and also by Henry S. Robbins, Esq., his attorney, and the respondent, John C. Ames, said marshal, being represented by the Hon. John C. Black, United States attorney, and the court, having now heard the arguments to conclusion and not being sufficiently advised in the premises, takes time to consider ; and now comes the petitioner, by his said attorney, and enters his motion to be enlarged on bail, and the court having considered the same, it is ordered that said petitioner, Edwin S. Skillen, be released on bail in the sum of one thousand dollars, with surety to be approved by the court.

30 On the same day, to wit, the third day of December, 1898, a writ of *habeas corpus* issued out of the clerk's office of said court, directed to John Ames, United States marshal, to execute; which said writ, together with the marshal's return thereon endorsed, is in the words and figures following, to wit:

Writ of Habeas Corpus.

Circuit Court of the United States of America, Northern District of Illinois, Northern Division, ss:

The United States of America to John C. Ames, U. S. marshal, northern district of Illinois, Greeting:

We command that you do, without excuse or delay, bring or cause to be brought before the circuit court of the United States of America for the northern district of Illinois, now sitting in the court-room of said circuit court, in the city of Chicago, in said district, the body of Edwin S. Skillen, by whatever name or addition he is known or called, and who is unlawfully detained in your custody, as it is said, together with the day and cause of his captivity and detention, then and there to abide such order and direction as our said circuit court shall make in that behalf. Hereof make due return under the penalty of what the law directs.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this third day of [SEAL.] December, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123rd year.

S. W. BURNHAM, *Clerk.*

31

Marshal's Return.

In the Circuit Court of the United States of America for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of EDWIN S. SKILLEN for a Writ of *Habeas Corpus.*

Marshal's return to writ.

I, John C. Ames, hereby certify and make return to the writ of *habeas corpus* issued in this case that I am the marshal of the United States for the northern district of Illinois, and that I now hold the above-named petitioner in my custody as such marshal by virtue of a certain commitment issued by Thomas C. MacMillan, clerk of the district court of the United States for the said district, on this 2nd day of December, 1898, which is set forth in full in the petition filed in this case, and a copy of which is hereto attached, directing me as such marshal to forthwith commit the said petitioner to the county jail of Cook county, in the said State of Illinois,

until a certain fine of five hundred dollars and costs, adjudged against the said Edwin S. Skillen by the said district court on the 2nd day of December, 1898, should be paid or the said petitioner otherwise discharged by law, a transcript of the record of the proceedings of the said district court in which said warrant was issued being attached to the said petition as Exhibit B. Nevertheless I have the body of the said Edwin S. Skillen now before this honorable court.

JOHN C. AMES,
United States Marshal,
By M. E. PATTERSON, *Deputy.*

(Endorsed :) Filed December 3, 1898. S. W. Buruham, clerk.

32 On the same day, to wit, the 3rd day of December, 1898, came Edwin S. Skillen, as principal, and Henry S. Robbins, as surety, and filed in the clerk's office of said court a bail bond; which said bail bond is in words and figures following, to wit:

Bail Bond.

Know all men by these presents that we, Edwin S. Skillen, as principal, and Henry S. Robbins, as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3rd day of December, A. D. 1898.

The condition of this obligation is such that whereas on the said 3rd day of Dec., A. D. 1898, in pursuance of the prayer of a petition of the said Edwin S. Skillen, filed in the circuit court of the United States of America for the northern district of Illinois, a writ of *habeas corpus* was issued by order of the Hon. William H. Seaman, judge of said court, directed to John C. Ames, marshal of the said United States for the district aforesaid, and commanding him to have the body of the said Edwin S. Skillen (then in custody of the said marshal by virtue of a certain mittimus theretofore issued upon a sentence and judgment of the district court of the said United States for the same division and district) before the said circuit court, and the said Edwin S. Skillen was thereupon brought before the said judge, and such proceedings were had as that the said Edwin S. Skillen was ordered admitted to bail in the sum of one thousand dollars pending the hearing on the said petition: Now, if the said Edwin S. Skillen shall personally be and appear before the said circuit court from day to day hereafter until the termination of the said hearing, and shall not depart that court without leave thereof, and shall, in case the said court shall

33 refuse to discharge him in pursuance of the said petition and remand him to the custody of said marshal, surrender himself to the said marshal to be further dealt with in pursuance of the

3—625

said mittimus, then this obligation shall be void, and otherwise shall remain in full force.

EDWIN S. SKILLEN. [SEAL.]
HENRY S. ROBBINS. [SEAL.]

Approved this 3rd day of Dec., 1898.

WM. H. SEAMAN, *Judge*.

(Endorsed :) Filed December 3, 1898. S. W. Burnham, clerk.

34 Afterwards, on, to wit, the 3rd day of Dec., in the July term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Hon. William H. Seaman, judge, appears the following entry, to wit:

35 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of EDWIN S. SKILLEN for *Habeas Corpus*.

This cause coming on for a final hearing upon the petition herein and return of the respondent hereto, and the court having heard the argument of counsel and being fully advised in the premises, the court finds and adjudged that said act of Congress does not violate the Constitution, and that the commitment and imprisonment of the prisoner under the warrant of *habeas corpus* in this case are sufficient cause and return in law for his detention by said marshal; therefore—

It is ordered by the court that the writ of *habeas corpus* allowed in this case be dismissed, and that the prisoner be remanded and continued in the custody of such marshal under such his arrest and commitment by the aforesaid process, referred to in the return of said marshal, and that the respondent have and recover from the petitioner herein the costs by him incurred in this matter; to which the petitioner duly excepts.

Thereupon said petitioner, Edwin S. Skillen, having presented to and filed in said court his assignments of errors and petition for appeal from this order to the Supreme Court of the United States—

It is further ordered that said appeal be allowed upon said petitioner's filing his appeal bond in the penal sum of three hundred dollars, to be approved by this court.

It is further ordered that upon said Skillen filing his appeal bond, as aforesaid, the order of judgment appealed from herein be, and the same is hereby, superceded until the final decision of the Supreme

Court upon said appeal, and the said Edwin S. Skillen be
36 not taken into custody upon his filing in this court a recognition and bail bond, with surety in the sum of one thousand dollars, conditioned for his appearance to answer the judgment of said Supreme Court upon said appeal.

Thereupon the said Edwin S. Skillen presents in open court his appeal bond, and it is ordered that the same stand approved, and that the clerk of this court send up to the October term, A. D. 1898,

of the Supreme Court of the United States a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings to such cause.

37 On the same day, to wit, on the 3rd day of December, 1898, came Edwin S. Skillen, by his attorney, and filed in the clerk's office of said court his petition for appeal; which said petition for appeal is in the words and figures following, to wit:

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of EDWIN S. SKILLEN for *Habeas Corpus*.

And now comes the petitioner, Edwin S. Skillen, and deeming himself aggrieved by the judgment or order of this court entered the 3rd day of Dec., 1898, herewith presents his assignments of errors and prays that an appeal may be allowed from said order to the Supreme Court of the United States, and that a transcript of the records and proceedings upon which said judgment was made may be sent, duly authenticated, to the Supreme Court of the United States.

EDWIN S. SKILLEN,
By HENRY S. ROBBINS,
His Attorney.

(Endorsed:) Filed December 3, 1898. S. W. Burnham, clerk.

On the same day, to wit, the 3rd day of December, 1898, came Edwin S. Skillen, by his attorney, and filed in the clerk's office of said court his assignments of error; which assignments of error are in words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of EDWIN S. SKILLEN for *Habeas Corpus*.

38 And now comes the petitioner, Edwin S. Skillen, and, for the purpose of appeal from the order entered herein to the Supreme Court of the United States, hereby assigns the following errors upon the record of this cause:

First. That the circuit court erred in dismissing the petition and writ of *habeas corpus* and remanding the petitioner to the custody of the marshal.

Second. That the circuit court erred in not sustaining said petition and discharging said petitioner from arrest.

Third. That the circuit court erred in not holding that part of the act of Congress approved June 13, 1898, and entitled "An act to provide ways and means to meet war expenditures, and for other purposes," upon which said petitioner was convicted, unconstitutional and in not adjudging said petitioner by reason thereof entitled to his discharge.

Wherefore said petitioner prays that said decree, judgment, or order may be reversed and said circuit court be directed to enter an order discharging said petitioner.

EDWIN S. SKILLEN,
By HENRY S. ROBBINS,
His Attorney.

On the same day, to wit, the 3rd day of December, 1898, came Edwin S. Skillen, as principal, and Henry S. Robbins, as surety, and filed in the clerk's office of said court an appeal bond; which said appeal bond is in the words and figures following, to wit:

39 Know all men by these presents that we, Edwin S. Skillen, as principal, and Henry S. Robbins, as sureties, are held and firmly bound unto the United States of America in the full and just sum of three hundred dollars, to be paid to the said United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a circuit court of the United States of America for the northern district of Illinois, in a suit depending — said court *between* in the matter of the petition of Edwin S. Skillen for a writ of *habeas corpus*, a judgment was rendered against the said Edwin S. Skillen, dismissing the writ of *habeas corpus* theretofore issued therein, and the said Edwin S. Skillen having obtained an appeal to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 5 days from the date thereof:

Now, the condition of the above obligation is such that if the said Edwin S. Skillen shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in force and virtue.

EDWIN S. SKILLEN. [SEAL]
HENRY S. ROBBINS. [SEAL]

Approved by—

WM. H. SEAMAN, *Judge.*

(Endorsed:) Filed Dec. 3, 1898. S. W. Burnham, clerk.

40 UNITED STATES OF AMERICA, ss :

To John C. Ames, United States marshal for the northern district of Illinois, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 5 days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, northern division, wherein Edwin S. Skillen is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Seaman, judge, this 3rd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

WM. H. SEAMAN,
U. S. Dist. Judge.

41 [Endorsed:] Supreme Court of the United States. Edwin S. Skillen *vs.* John C. Ames, marshal. Citation. I hereby accept service of the within citation. John C. Ames, U. S. marshal for the northern district of Illinois, by M. E. Patterson, deputy.

42 NORTHERN DISTRICT OF ILLINOIS, } ss :
Northern Division,

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all the proceedings had in said court in the matter of the petition of Edwin S. Skillen for writ of *habeas corpus*, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, in said district, this third day of December, 1898.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

S. W. BURNHAM, *Clerk.*

[Endorsed:] In the United States Supreme Court. Edwin S. Skillen, appellant, *v.* John C. Ames, marshal, appellee.

Endorsed on cover: File No. 17,210. N. Illinois C. C. U. S. Term No., 625. Edwin S. Skillen, appellant, *vs.* John C. Ames, United States marshal for the northern district of Illinois. Filed December 6th, 1898.



TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 636.

CHARLES H. INGWERSEN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

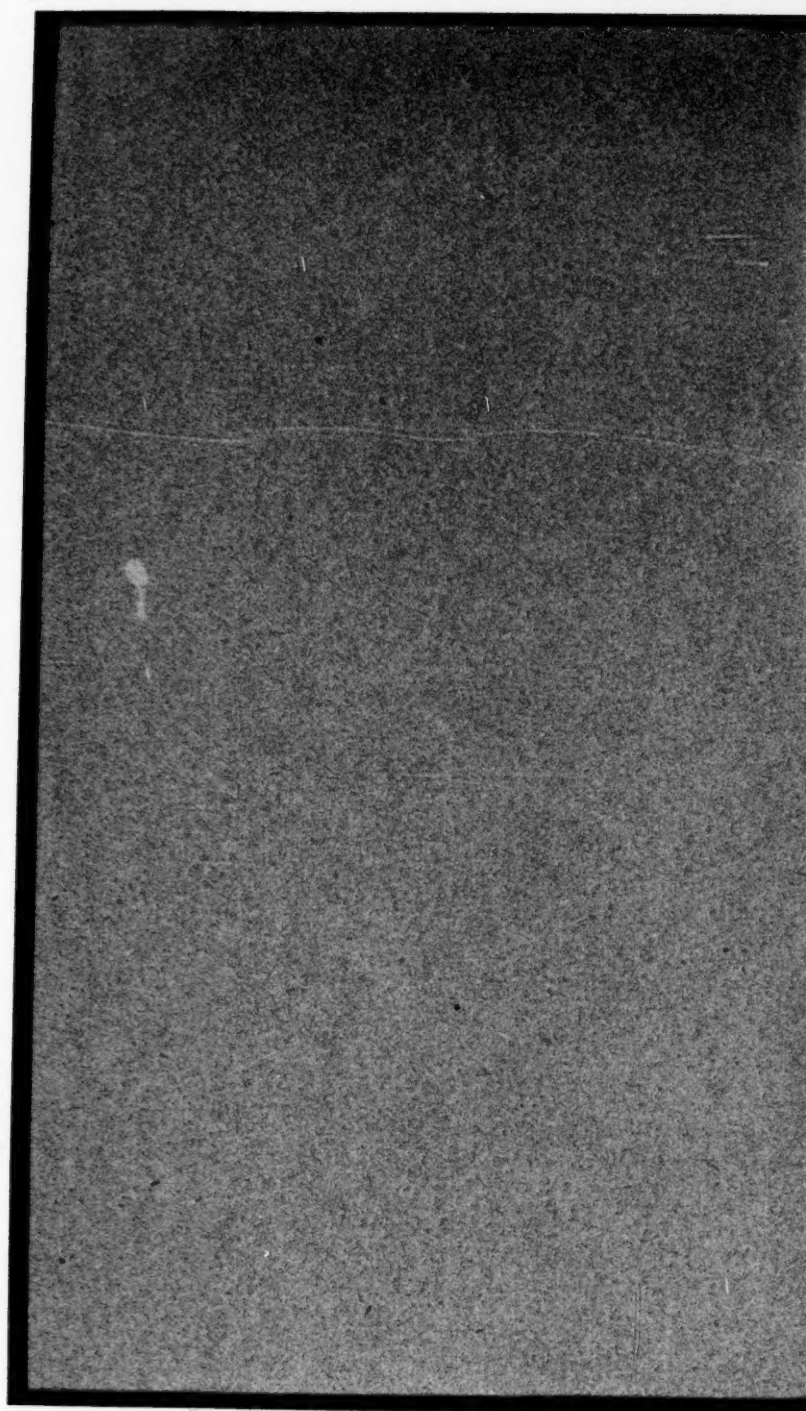
IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS

FILED DECEMBER 13, 1898.

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(17,221.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 636.

CHARLES H. INGWERSEN, PLAINTIFF IN ERROR,

v.s.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS

INDEX.

	Original.	Print.
Caption	1	1
Order to file information	1	1
Information	3	2
Exhibit A—Description of the Union stock yards	8	4
B—Act of incorporation and by-laws of the Union Stock Yard and Transit Company of Chicago ...	9a	5
Affidavit of Frank E. Hemstreet.....	10	13
Motion to quash information	12	14
Demurrer to information	14	15
Order taking motion to quash under advisement	16	16
Order taking demurrer under advisement.	17	17
Order overruling motion to quash	17	17
Order overruling demurrer.	18	17
Order entering <i>nolle prosequi</i> as to first count	18	18
Trial and verdict.....	18	18
Order overruling motion for new trial.	19	18
Order overruling motion for judgment <i>non obstante veredicto</i>	19	19
Order overruling motion in arrest of judgment	20	19

INDEX.

	Original.	Print.
Judgment	20	19
Petition for writ of error, &c.	22	20
Order granting writ of error to operate as supersedeas, &c.	24	21
Supersedeas bond.	25	21
Assignment of errors.	28	23
Bill of exceptions.	40	28
Evidence for complainant.	41	29
Testimony of W. B. Ingwerson	41	29
C. W. Baker.	47	33
Defendant's motion for instructions.	71	45
Charge to jury.	74	46
Judge's certificate to bill of exceptions.	77	47
Clerk's certificate.	78	48
Writ of error.	79	48
Return on writ of error.	80	49
Citation and service.	81	49

1 Pleas had at a regular term of the district court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the first Monday of July, it being the fourth day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third year.

Present: The Honorable Peter S. Grosscup, judge of said court, presiding; John C. Ames, United States marshal for said district, and T. C. MacMillan, clerk of said court.

THE UNITED STATES
vs.
CHARLES H. INGWERSEN. } 2946.

Be it remembered that heretofore, to wit, on the 31st day of October, A. D. 1898, it being one of the days of the July term of the district court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the first Monday of July, it being the fourth day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third year, before the Honorable Peter S. Grosscup, judge of said court, presiding, the following order was had and entered of record in said cause, to wit:

THE UNITED STATES
vs.
CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

Comes John C. Black, Esq., district attorney, and presents an information against Charles H. Ingwersen, the defendant herein, charging the said Charles H. Ingwersen with violating section
2 25 of the act of Congress of June 13, 1898, and asks leave of the court to file the same; whereupon it is ordered by the court that said information be filed and the cause placed upon the dockets of this court.

And afterwards, to wit, on the 31st day of October, A. D. 1898, said information was filed, the same being in the words and figures following, to wit:

- 3 In the District Court of the United States of America for the Northern District of Illinois, Northern Division, of the October Adjourned Term, in the Year Eighteen Hundred and Ninety-eight.

NORTHERN DISTRICT OF ILLINOIS, }
Northern Division, } *set:*

Be it remembered that John C. Black, attorney of the United States of America for the northern district of Illinois, who for the said United States in this behalf prosecutes, in his own person comes here into the district court of the said United States for the district aforesaid, on this thirty-first day of October, in this same term, and for the said United States gives the court here to understand and be informed that Charles H. Ingwersen, late of the city of Chicago, in the northern division of the said district, on the eleventh day of August, in the year of our Lord eighteen hundred and ninety-eight, at Chicago aforesaid, in the division and district aforesaid, at a certain exchange and place similar to an exchange and board of trade—that is to say, at the Union stock yards of Chicago—particularly described in a paper marked “Exhibit A,” attached to and made a part of this information, and then owned and conducted by the Union Stock Yard and Transit Company of the City of Chicago (a corporation then and there existing) under and pursuant to its charter and by-laws, copies of which are also attached to and made

- a part of this information, marked “Exhibit B,” unlawfully
4 did make, as agent for Ingwersen Brothers and Smith, a corporation then existing under that name, theretofore incorporated under the laws of the State of Illinois for the purpose of carrying on the business of a live-stock commission merchant and a dealer in live stock, to one Edward Egan, as agent for the T. C. Eastman Company, a corporation then existing under that name, theretofore incorporated under the laws of the State of New York for the purpose of dealing in live stock, a certain sale of merchandise for present delivery—that is to say, of one hundred and thirty head of cattle, weighing 186,160 pounds, at a price of five dollars and thirty-five cents per hundred pounds, and six head of cattle, weighing 7,830 pounds, at a price of four dollars and seventy-five cents per hundred pounds, for a total sum of ten thousand three hundred and thirty-one dollars and forty-eight cents (the same being cattle and merchandise then lately before consigned to the said Ingwersen Brothers and Smith for sale upon commission for account of the owner thereof, to wit, one A. B. Bell, of Ida Grove, Iowa)—and did then and there deliver the same merchandise, in pursuance of the said sale, without there and then or afterwards making and delivering to the said Edward Egan, as agent for the said T. C. Eastman Company, or to any other person as such agent, or to the said company, any bill, memorandum, agreement, or other evidence of the said sale showing the date thereof, the name of the seller, the amount of the sale, and the matters and things to which it referred, as required by law, and with intent then and there, on

5 the part of him, the said Charles H. Ingwersen, to evade the provisions in that behalf in the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," and did refuse, fail, and neglect to make and deliver, as such agent, as aforesaid, to any person any such bill, memorandum, agreement, or other evidence of the said sale, against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

And the said attorney of the said United States, who prosecutes, as aforesaid, for the said United States, further gives the court here to understand and be informed that the said Charles H. Ingwersen, on the fourteenth day of October, in the same year of our Lord eighteen hundred and ninety-eight, at Chicago aforesaid, in the division and district aforesaid, at a certain exchange and place similar to an exchange and board of trade—that is to say, at the Union stock yards of Chicago—particularly described in a paper marked "Exhibit A," attached to and made part of this information, and then owned and conducted by the Union Stock Yards and Transit Company of the City of Chicago (a corporation then and there existing) under and pursuant to its charter and by-laws, copies of which are also attached to and made a part of this information, marked "Exhibit B," with intent then and there on the part of him, the said Charles H. Ingwersen, to evade the provisions in that behalf in the act of Congress approved June 13, 1898, and entitled "An act to provide ways and means to meet war expenditures, and for other purposes," unlawfully did make, as agent for Ingwersen Brothers and Smith, a corporation then existing under
6 that name, theretofore incorporated under the laws of the State of Illinois for the purpose of carrying on the business of a live-stock commission merchant and a dealer in live stock, to one David Moog a certain sale of merchandise for present delivery—that is to say, of nineteen head of cattle, weighing 22,280 pounds, at a price of five dollars and twenty-five cents per hundred pounds, for a total sum of eleven hundred and sixty-nine dollars and seventy cents (the same being cattle and merchandise then lately before consigned to the said Ingwersen Brothers and Smith for sale upon commission for the account of one H. Hughes, of Hartwick, Iowa)—and did then and there deliver the cattle and merchandise in this count mentioned in pursuance of the last-mentioned sale, and deliver to the said David Moog a memorandum of the same sale showing the date thereof, the name of the seller, the amount of the sale, and the matters and things to which it referred, without then and there having the proper stamps affixed thereto for denoting the payment of the internal-revenue tax upon the last-mentioned sale and memorandum, as required by law, and did refuse, fail, and neglect to affix any such stamps to the said memorandum, against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

Whereupon the said attorney for the said United States, who prosecutes, as aforesaid, for the said United States, prays the consid-

eration of the court here in the premises, and that due process of law may be awarded against him, the said Charles H. Ingwersen, in this behalf, to make him answer to the said United States concerning the premises aforesaid.

JOHN C. BLACK,
United States Att'y.

Endorsed: No. 2946. District court, criminal, northern div. The United States vs. Charles H. Ingwersen. Information on sec. 25, act of June 13, 1898 (internal-revenue laws). Filed October 31st, A. D. 1898. T. C. MacMillan, clerk. John C. Black, U. S. att'y, N. dist. Ills.

8

"EXHIBIT A."

The Union stock yards described in this information, at the respective times therein mentioned and theretofore and since, covered and cover three hundred and thirty-five acres of land situated between Thirty-ninth street and Forty-seventh street and Halsted street and Ashland avenue, in the city of Chicago, in the county of Cook and State of Illinois, of which two hundred acres are covered by pens, which are made by fences surrounding and enclosing the same, there being alleys running through the yards separating the pens, into which alleys gates lead from the pens. The number of the pens is about five thousand and they are in size respectively from eight feet square to fifty feet square. Railway tracks belonging to and operated by the Chicago Junction Railway Company, which connect with all the lines of railway to the city of Chicago, extend into the yards, over which cattle, hogs, and other live stock received at or shipped from the Union stock yards are carried. Upon the arrival of cattle, hogs, or other live stock at the Union stock yards consigned to the commission merchant at the Union stock yards, such cattle, hogs, or other live stock are placed by the owner or consignee thereof, or his or its agents, in one or more of the pens, and are there cared for, fed, and watered by such owner or consignee. Any person is at liberty to send, take, or to receive cattle, hogs, or other live stock into the Union stock yards, and there place, or have the same placed, in a pen or pens, care for the same, and there sell any cattle belonging to him or which he has the right to sell.

9 Any person has access to the pens containing cattle, hogs, or other live stock for the purpose of buying the same, and has liberty to purchase or negotiate for the purchase thereof. Sales of cattle, hogs, and other live stock in the yards are at private sale. Commission merchants having cattle, hogs, or other live stock in a pen or pens in the yards seek and solicit a buyer therefor, and when a proposed buyer is so found take him to the pens in which such live stock is contained, and there exhibit such live stock; and to such proposed buyer, or to any person who may come to said pen and who may desire to buy, such live stock is sold in the pen in which they are yarded. Sales of cattle, hogs, and sheep in the yards are by weight, and upon a sale thereof being made such live stock if taken by the owner or commission merchant having charge thereof

from the pen in which it is confined to a scale or scales in the yard and belonging to the Union Stock Yard and Transit Company, and are there weighed by a weighmaster employed by the Union Stock Yard and Transit Company and in charge of the scale in which said live stock are weighed, and the weight of such live stock is thereby determined as the weight for which the purchaser pays upon his purchase, and the amount of the purchase price at the price per pound or per hundred pounds fixed in such sale is thereby determined.

[Endorsed:] U. S. v. Ingwersen. Copy of information.

9a

Ex B.

Act of Incorporation and By-laws of the Union Stock Yard and Transit Company of Chicago.

Incorporated February 13, 1865.

By-laws adopted by the board of directors April 19, 1865.

9b

Act of Incorporation and By-laws of the Union Stock Yard and Transit Company of Chicago.

Incorporated February 13, 1865.

By-laws adopted by the board of directors April 19, 1865.

9c

Charter.

An act to incorporate the Union Stock Yard and Transit Company of Chicago.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That John L. Hancock, Virginius A. Turpin, Roselle M. Hough, Sidney A. Kent, Charles M. Culbertson, Lyman Blair, David Kreigh, Joseph Sherwin, Martin L. Sykes, Jr., George W. Cass, James F. Joy, John F. Tracy, Timothy B. Blackstone, Joseph H. Moore, John S. Barry, Homer E. Sargent, Burton C. Cook, John B. Drake, William D. Judson, and such other persons as may associate with them for that purpose, be, and the same are hereby made a body politic and corporate, by the name and style of "The Union Stock Yard and Transit Company of Chicago," with perpetual succession; and by that name and style may contract and be contracted with, sue and be sued, have a common seal, which they may alter and revise at pleasure, and may have and exercise all the rights, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as the same are herein set forth.

SEC. 2. That said company shall have the power to locate, construct and maintain, upon the land purchased for such purpose, in

convenient proximity to the southerly limits of the city of Chicago, and west of Wallace street, as the same would be extended in a straight line south from said city limits, all the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches and turnouts, aqueducts, for the reception, safe keeping, feeding and watering, and for the weighing, delivery and transfer of cattle and live stock of every description and also dead and undressed animals that may be at, or passing through or near the city of Chicago, and for the accommodation of the business of a general Union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same, if deemed expedient, for the convenience of drovers, dealers and the public doing business at the said yards; and shall have power to repair, enlarge, relocate, reconstruct and alter the said yards, structures and buildings, or any of them, as shall become necessary or expedient from time to time; subject, nevertheless, to the restrictions above mentioned as to the location of the same; and shall have the right and power to make advances of money upon such cattle and live stock, for freight or other purposes, as may become expedient, and for such care, subsistence and handling, and advances made upon such stock, the said company may take and require to be paid, such reasonable charges as may be deemed just and proper, and shall have the power to lease the public house or hotel building so erected for the accommodation of those drawn together by the business of such yards, upon such terms and conditions as shall be deemed proper, or to make such other arrangements for the management thereof as may be deemed advisable, from time to time; and if the same shall be kept and managed by said company, shall have the power to fix and require to be paid, such reasonable charges for the accommodation afforded by said house or houses, as shall be just and proper.

SEC. 3. The said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the city of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the lake shore and the southwest corner of said city, and on the west between said last-named point and the north line of section number nineteen (19), township number thirty-nine (39)
9d north, range fourteen (14), east of the third principal meridian, and shall have the right and power to make such connections with such suitable side tracks, switches and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies, which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties; and shall have the power and authority to locate, and, from time to time, renovate, change, alter, construct and reconstruct, and fully to finish and maintain its said railroad

or roads, side tracks and connections, and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same, to and from said yards, and may also transport and allow to be transported between the railroads entering said city, and so connected by the road or roads hereby authorized, by steam or other power, freight and property of every kind as well as stock and cattle, and may fix and establish, take and receive, such rates of toll for all freight and property so transported between said several railroads as the directors shall, from time to time, establish: Provided, all fees and charges for freights, hotel bills, feeding, carrying and everything done by reason of the powers herein given, shall be subject to any general law that may be passed by the legislature of this State, in reference to stock yards or railroads; and for the purpose of constructing said railroad and appurtenances, shall have the authority and power to lay out, designate and establish the road, in width not exceeding one hundred feet through the entire line thereof, and to mark out and designate the ground for such yard and other structures, and may acquire such lands, which may be necessary for the purpose of constructing said tracks, either by purchase or in the manner hereinafter provided, with the right to let or demise the real estate and property so acquired, and improvements thereon; and shall also have the right and authority to take a lease or leases of ground for said yards, upon such terms as the directors of said company may deem just and reasonable, and all contracts and agreements made in connection with such lease or leases shall be valid and binding upon the parties thereto; and said company shall have the right, with the consent of the proper authorities having control thereof, to locate or construct its roads across any street or highway, doing as little damage and discommoding the public as little as may be consistent with the use of said track so laid.

SEC. 4. The said company shall have power and authority to receive, take and hold all such voluntary grants and donations of land and real estate as may be made to said company, for the purpose aforesaid, and may contract and agree with the owners and occupiers of any land which may be necessary for such purposes, or which said company may desire to use in connection therewith, in order to carry out the objects of its organization; and said company is authorized and empowered to receive and take grants and conveyances of all interests and estates in such lands to them and their successors and assigns, in fee or otherwise, and in case the said company cannot agree with the owners or occupiers of lands, necessary for the railroad tracks herein permitted to be constructed, so as to procure the same by the voluntary deed of such owners or occupiers or if such owners or occupiers or any of them be a *femme covert*, infant *non compos mentis* unknown or out of the county of Cook, the same may be taken for the purpose of constructing said railroad track (but for no other purpose), and paid for, if any damages are awarded, in the manner provided for in the "Act to amend the law condemning the right of way for purposes of internal improvement," approved June 22, A. D. 1852, and the acts amendatory

thereof, to the benefits of all the rights, privileges, franchises and immunities contained in the provisions of which said act and the amendments thereof, said company shall be, and are hereby, declared entitled.

96 SEC. 5. The capital stock of said company shall be one million of dollars, which stock shall be divided into shares of one hundred dollars each, which shall be deemed personal property, and may be taken and held by individuals, and may be issued to such persons, and certified, transferred and registered in such manner and in such places as may be ordered and provided for by the board of directors, who shall have the power to require the payment for the stock subscribed, in the manner, at the time and in such terms as they may direct; and the same may be paid for in real estate or in personal property, under the direction of said board of directors, who shall, also, have power to declare dividends upon profits earned by said company. On the refusal or neglect of any stockholder to make payment on the requisitions of the board of directors, the share or shares of such delinquent may, after thirty days' public notice in one of the daily newspapers of Chicago, be sold at public auction, under such rules as the directors may adopt.

SEC. 6. The corporate powers of said company shall be vested in and exercised by a board of directors, to consist of not less than five nor more than nine in number, and such other officers, agents and servants as they shall appoint. The first board of directors shall consist of Martin L. Sykes, Jacob N. McCullough, James F. Joy, John F. Tracy, Timothy B. Blackstone, John L. Hancock, Roselle M. Hough, Charles M. Culbertson, and Virginus A. Turpin, who shall hold their office until the third Wednesday of January, A. D. 1866, and until their successors are elected and qualified. Vacancies in said board may be filled by a vote of two-thirds of the directors remaining, such appointees to continue in office until the next regular annual election of directors, and which said annual election shall be held on the third Wednesday of January in each year, at such place as the directors may appoint, thirty days' notice being given in one newspaper in Chicago, of the time and place of such election.

SEC. 7. At any election of directors, each share of stock shall be entitled to one vote, to be given either in person or proxy, and the person receiving the largest number of votes to be declared duly elected, and to hold the office until the next annual election, and until their successors shall be duly qualified; and if for any cause the annual election shall fail, the company shall not be dissolved, but the directors in office shall continue to hold their places as directors, until an election shall be had and their successors duly elected and qualified.

SEC. 8. The directors herein named shall organize their board by electing one of their number president, and by appointing a secretary and treasurer. The said company shall have power to make, ordain and establish by-laws, rules and regulations necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well ordering and securing the affairs, business and interests

of the company, provided the same shall not be repugnant to the Constitution and laws of the United States or of this State.

SEC. 9. Should it be necessary for the construction of the road or roads, hereby authorized to be built, to cross any water-course, stream of water or road, it shall be lawful, under the direction of the proper authorities having control thereof, to construct the said road upon or across the same; provided, the same shall be so constructed as not to unnecessarily impair the usefulness of said road or water-course.

SEC. 10. The said company is hereby authorized, from time to time, to borrow such sums of money as it may deem expedient, and to issue and dispose of their bonds therefor in denominations of not less than five hundred dollars each, and to an amount which, in the aggregate, shall not exceed five hundred thousand dollars, and bearing such rate of interest, not exceeding ten per cent., as the com-

pany shall deem expedient, and to secure the payment of the same, may execute a mortgage or deed of trust of all its property of every description, in possession or to be acquired, with such terms, stipulations and conditions as may be deemed expedient.

SEC. 11. Nothing in this act contained shall be deemed, taken or construed as conferring upon the company hereby created, any powers or authority to maintain or operate a railroad for the conveyance of passengers or freight in the city of Chicago. And the said company hereby incorporated, is hereby expressly prohibited from making any contract or having any agreement, either expressed or implied, with any railroad company, to receive cattle, hogs or other freight transported over the road of any such railroad company, to the exclusion of any person or corporation having a stock yard in proximity to said city; and said company hereby incorporated, shall not receive any cattle, hogs or other stock consigned to any other person or company having a stock yard in proximity to said city; and any willful violation of any of the provisions of this act by the company hereby incorporated, shall work an absolute forfeiture of all the rights, privileges and immunities conferred by this act, and the franchises hereby conferred shall become utterly void.

SEC. 12. This act shall be deemed a public act, and shall be in force from and after its passage.

ALLEN C. FULLER,
Speaker of House of Representatives.
WILLIAM BROSS,
Speaker of the Senate.

Approved February 13, 1865.
RICHARD J. OGLESBY.

Amendment.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly: That the board of directors of the Union Stock Yards and Transit Company of Chicago be, and the same is hereby authorized from time to time, to increase the capital stock of said company five hundred thousand dollars, in

addition to its present capital ; but no stock shall be issued for a less sum or amount than the par value thereof actually paid in, in cash.

3 Pr. Laws 1867, 7th March, 100.

9g UNITED STATES OF AMERICA, } ss :
State of Illinois,

I, Sharon Tyndale, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law entitled "An act to incorporate the Union Stock Yard and Transit Company of Chicago," now on file in my office.

In witness whereof I have hereunto set my hand, and affixed the great seal of State, at the city of Springfield, this fifteenth day of February, A. D. 1865.

SHARON TYNDALE,
Secretary of State.

9h *By-laws of the Union Stock Yard and Transit Company of Chicago.*

ARTICLE I.

Annual Meeting.

The annual meeting of the stock-holders for the election of directors, and for such other business as shall be brought before them, shall be held on the third Wednesday of January in each and every year, at the office of the company, in the city of Chicago. Notice of the time and place of the meeting, signed by the president or secretary, shall be published in one or more of the daily newspapers of the city of Chicago, at least thirty days previous to such meeting.

At all meetings stockholders may vote in person or by proxy, and shall have one vote for each and every share of stock standing in their names.

ARTICLE II.

Election of Directors.

At the annual meeting there shall be elected such a number of directors as shall have been or may be determined by said stockholders, and their election shall be by ballot ; and such other business may be transacted as shall be brought before them within the power of the company and the charter thereof.

At all elections of directors, the board of directors shall be judges of the qualifications of voters, and shall prescribe rules and regulations for voting. The board may commit its powers in this matter to a committee of its own members. The election of directors shall be held on the day designated for that purpose unless prevented by accident, in which case the board shall designate another

day for the election. The proceedings of any meeting of the stockholders shall be entered by the secretary in full on the minutes of the company.

ARTICLE III.

Officers of the Company.

The officers of the company shall consist of a president, a vice-president, second vice-president, secretary, treasurer and general superintendent. An assistant secretary and assistant treasurer also may at any time be appointed by the board. The offices of secretary and treasurer and of assistant secretary and assistant treasurer may respectively be held by one person.

ARTICLE IV.

The board of directors, at their first meeting after every annual election of the company shall elect by ballot the president, vice-president, second vice-president, secretary and treasurer; also the assistant secretary and assistant treasurer, whenever they shall determine to have such officers, or either of them; and such officers shall hold their offices during the pleasure of the board. They may also appoint a superintendent, engineer, agents and such other officers as they may judge proper and prescribe their salaries.

ARTICLE V.

The president shall preside at all meetings of the stockholders or directors, if present, and shall have such powers and perform such duties as may be, from time to time, conferred upon him by the board of directors. He shall have the general supervision of the affairs of the company and it shall be his duty as chief executive officer to see that the orders and resolutions of the board are carried into effect. The vice-president shall, in the absence of the president, or in case of inability, from any cause, of the president to perform the duties of the office, be invested with all the power and authority now or hereafter, vested in the president, in virtue of the charter and by-laws of this company. The second vice-president shall, in the absence of the president and vice-president, or in case of the inability from any cause, of the president or vice-president to perform the duties of the office of president, be invested with all power and authority now or hereafter vested in the president, by virtue of the charter and by-laws of the company. The president shall have power to call meetings of the board, from time to time when he shall think proper; and it shall be his duty to call such meetings whenever requested by any two of the directors in writing. He shall conduct the correspondence and attend generally to the execution of the business of the company, under the direction of the board.

ARTICLE VI.

Duties of Secretary and Assistant Secretary.

It shall be the duty of the secretary to give public notice of all meetings of the stockholders in the manner prescribed by article 1. He shall also notify the members of the board of directors of all special meetings of the board, when the same shall be called by the president. He shall attend all meetings of the board of directors, when practicable, and keep a true and fair record of their proceedings in a book kept for that purpose, and shall safely keep all papers and documents which shall come into his possession as secretary, and shall prepare such statement and accounts for the directors and officers as may from time to time be required by them. He shall have the custody of the corporate seal of the company and affix same to all papers which require sealing and which have been signed by the president. He shall keep the general books and accounts of the company so as to show the true condition of affairs; he shall also sign all certificates of stock and such other papers and documents as are required by the charter, resolutions of the board or by-laws of the company.

It shall be the duty of the assistant secretary to do and perform such of the duties of the secretary as are consistent with the charter, and as may from time to time be required of him by the board of directors.

ARTICLE VII.

Duties of the Treasurer.

It shall be the duty of the treasurer to safely keep and account for all moneys, funds and property of the company, and to render such account, and present such statement to the directors and officers as may, from time to time, be required of him. It shall also be his duty to pay at all times, whenever there are funds of the company in his hands, such sums as may be required, upon order or warrant of the superintendent, countersigned by such other officer of the board, or of the company, as may, from time to time, by the board of directors be authorized to make drafts upon him, as such treasurer, and in no other way; and for the faithful performance of all duties required of him, he shall give to the company a bond in such sum of money as shall be designated by the board of directors, which bond shall be to the satisfaction and approval of said board of directors.

ARTICLE VIII.

Duties of the General Superintendent.

It shall be the duty of the superintendent to exercise a general supervision over the yards, enclosures, buildings, structures and railway lines of the company; and with the approbation of the president, he shall appoint all persons about the works of the com-

pany and may remove them at pleasure, and shall perform such other duties as may be assigned him from time to time by the president or board of directors.

ARTICLE IX.

The stock of this company shall only be transferable upon the stock transfer book kept for such purpose by the secretary, and shall not be transferable while any assessment or calls remain due and unpaid thereon, and in all cases upon the transfer of any stock, the former certificate shall be surrendered and a new certificate issued in the name of the party to whom the transfer is made, and upon the payment of any installments due upon stock, the certificate of stock upon which same is paid shall be surrendered and a new certificate issued, specifying the amounts which shall have been paid upon said stock. All certificates issued for stock shall be signed by the president and countersigned by the secretary.

ARTICLE X.

These by-laws may be altered and amended at any meeting of the board of directors, by a majority of all the members, prior notice thereof having been given to the board at one of its previous meetings.

10 And afterwards, to wit, on the 31st day of October, A. D. 1898, the affidavit of Frank E. Hemstreet, deputy collector of internal revenue for the first collection district of Illinois, was filed in said court, said affidavit being in the words and figures following, to wit:

In the District Court of the United States of America for the Northern District of Illinois, Northern Division.

UNITED STATES OF AMERICA	} No. —. Information.
vs.	
CHARLES H. INGWERSEN.	

Frank E. Hemstreet, a deputy collector of internal revenue for the first collection district of Illinois, makes oath and says that he is informed and believes that Charles H. Ingwersen, on the 14th day of October, A. D. 1898, at the city of Chicago, in the said division and district, at a certain exchange and place similar to an exchange and board of trade, to wit, the Union stock yards of Chicago, unlawfully did make a sale of merchandise, to wit, nineteen head of cattle, to one David Moog, for the sum of \$1,169.70, and did then and there deliver the said cattle and merchandise and deliver to the buyer, to wit, the said David Moog, a memorandum of the same sale, without then and there having the proper stamps affixed thereto for denoting the internal-revenue tax upon the same, with intent to evade the provisions in that behalf of the act of Congress of June 13, 1898, entitled "An act to provide ways and means to

meet war expenditures, and for other purposes;" and, further, that the said Charles H. Ingwersen, on the 11th day of August, 1898, at the city of Chicago, in the said division and district, at a certain exchange and place similar to an exchange and board of

11 trade there, to wit, the Union stock yards of Chicago, unlawfully did make a sale of merchandise, to wit, 136 head of cattle, for a total sum of \$10,331.48, and did then and there deliver the said cattle and merchandise without then and there or afterwards making and delivering to the buyer, to wit, one Edward Egan, any bill, memorandum, agreement, or other evidence of the said sale, as required by law, with intent to evade the provisions in that behalf in the act of Congress of June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," contrary to the form of the statute of the said United States in such case made and provided.

FRANK E. HEMSTREET,
Dep'ty Cl'k, 1st Dist. Ills.

Sworn and subscribed before me by the above-named Frank E. Hemstreet this 29th day of October, A. D. 1898.

C. R. PICKARD,
U. S. Commissioner, Nor. Dist. Illinois.

Endorsed: No. 2946. District court, criminal, northern div. The United States vs. Charles H. Ingwersen. Affidavit of Frank E. Hemstreet, dep. coll'r int. rev. Filed Oct. 31st, A. D. 1898. T. C. MacMillan, clerk. John C. Black, U. S. att'y, N. dist. Ills.

And afterwards, to wit, on the 2nd day of November, A. D. 1898, came the defendant, by his attorney, and filed in said court a motion to quash the information filed herein; which said motion is in the words and figures following, to wit:

12 In the District Court of the United States for the Northern District of Illinois, Northern Division Thereof.

UNITED STATES	} Copy.
vs.	
CHARLES H. INGWERSEN.	

Motion to Quash Information and Each Count Thereof.

And the said Charles H. Ingwersen, in his own proper person, comes into court here and, having heard the said information and each count thereof read, moves that the said information and that each count thereof be quashed upon the following grounds:

1. That the said pretended acts, defaults, and omissions of the defendant in the said information and in the said respective counts thereof mentioned are not, nor are any or either of them, within the provisions, prohibition, or requirement of the said act of Congress.

- 13 2. That the said respective sales by defendant in the said information mentioned are not within the provisions of the said act of Congress.
3. That the said sales, agreements of sale, or agreements to sell in the said information mentioned were not, nor was either of them, a sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of trade or other similar place within the meaning of Schedule A of said act of Congress in said information mentioned.
4. That the said act of Congress and the said respective provisions thereof in the said information mentioned are in violation of the Constitution of the United States and void.
5. That the said respective counts in said information mentioned do not, nor does either of them, set up or charge or aver any offense within the said act of Congress or otherwise.

JOHN S. MILLER &
MERRITT STARR,
Att'ys for Defendant.

Endorsed: Gen. No., 2946; term No., —. In the U. S. district court, northern district of Ill., northern division. *United States vs. Charles H. Ingwersen.* Motion to quash information. Filed on this 2nd day of November, A. D. 1898. T. C. MacMillan, clerk. Peck, Miller & Starr, counselors-at-law, 913-916 Monadnock block, Chicago.

And afterwards, to wit, on the 2nd day of November, A. D. 1898, came the defendant, by his attorney, and filed in said court a demurrer to the information filed herein; which said demurrer is in the words and figures following, to wit:

- 14 In the District Court of the United States for the Northern District of Illinois, Northern Division Thereof.

UNITED STATES
v.
CHARLES H. INGWERSEN. } Copy.

And the said Charles H. Ingwersen, in his own proper person coming into court here, having heard the said first count of the said information read, says that the said first count of said information and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he, the said Charles H. Ingwersen, is not bound by the law of the land to answer the same for the reasons, among others, that the said first count of the said information doth not charge or state any offense under the said act of Congress therein mentioned, and because the said act of Congress and the said tax imposed thereby and the provisions of said act do not apply to the said sale or agreement of sale or agreement to sell made by the said defendant in said first count mentioned, and because said act of Congress in the said first count

mentioned and the provisions thereof therein mentioned are in violation respectively of the provisions of the Constitution of the United States and are void ; and this he is ready to verify. Wherefore, for want of sufficient information in this behalf, the said

15 Charles H. Ingwersen prays judgment and that by the court he may be dismissed and discharged from the said premises in the said first count of said information specified.

JOHN S. MILLER &
MERRITT STARR,
Att'ys for Defendant.

And the said Charles H. Ingwersen, in his own proper person coming into court here, having heard the said second count of the said information read, says that the said second count of said information and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he, the said Charles H. Ingwersen, is not bound by the law of the land to answer the same for the reason that the said second count of the said information doth not charge or state any offense under the said act of Congress therein mentioned, and because the said act of Congress and the said tax imposed thereby and the provisions of said act do not apply to the said sale or agreement of sale or agreement to sell made by the said defendant in the said second count mentioned, and because said act of Congress in the said second count mentioned and the provisions thereof therein mentioned are in violation respectively of the provisions of the Constitution of the United States and are void ; and this he is ready to verify. Wherefore, for want of sufficient information in this behalf, the said Charles

16 H. Ingwersen prays judgment and that by the court he may be dismissed and discharged from the said premises in the said second count of said information specified.

JOHN S. MILLER &
MERRITT STARR,
Att'ys for Defendant.

Endorsed: Gen. No., 2946 ; term No., —. In the U. S. district court, northern district of Ills., northern division. United States vs. Charles H. Ingwersen. Demurrer. Filed on this 2nd day of November, A. D. 1898. T. C. MacMillan, clerk. Peck, Miller & Starr, counsellors-at-law, 913-916 Monadnock block, Chicago.

And afterwards, to wit, on the 2nd day of November, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit :

THE UNITED STATES	} 2946. Vio. Int. Rev. Laws.
vs.	
CHARLES H. INGWERSEN.	

Come the parties, by their attorneys, and the defendant in his own proper person, and the defendant, by his counsel, moves the

court to quash the information filed herein against him, and, after arguments of counsel, said motion is by the court taken under advisement.

17 And afterwards, to wit, on the 2nd day of November, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES	}	2946. Vio. Int. Rev. Laws.
vs.		
CHARLES H. INGWERSEN.		

This cause coming on to be heard upon the demurrer of the defendant to the information filed herein against him, come the parties, by their attorneys, and the defendant in his own proper person, and, after hearing the arguments of counsel, said demurrer is by the court taken under advisement.

And afterwards, to wit, on the 7th day of November, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES	}	2946. Vio. Int. Rev. Laws.
vs.		
CHARLES H. INGWERSEN.		

Come the parties, by their attorneys, and the court having heretofore taken under advisement the motion of the defendant to quash the information filed herein against him, and the court being now fully advised in the premises, it is ordered that said motion be, and the same is hereby, overruled and denied; to which ruling of the court the defendant, by his counsel, excepts.

And afterwards, to wit, on the 7th day of November, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit:

18 THE UNITED STATES	}	2946. Vio. Int. Rev. Laws.
vs.		
CHARLES H. INGWERSEN.		

Come the parties, by their attorneys, and the court having heretofore taken under advisement the demurrer of the defendant to the information filed herein against him, and the court being now fully advised in the premises, it is ordered that said demurrer be, and the same is hereby, overruled; to which ruling of the court the defendant, by his counsel, excepts.

And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES
 vs.
 CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

Comes the United States, by John C. Black, Esq., district attorney, who declines to prosecute further in this cause as to the first count in the information filed herein; whereupon it is ordered by the court that as to said first count a *nolle prosequi* be, and the same is hereby, entered.

And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES
 vs.
 CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

Come the parties, by their attorneys, and the defendant in his own proper person, and being arraigned upon the second count of the information filed herein against him, the defendant pleads not guilty thereto, and for his defense puts himself upon the country; whereupon comes a jury of good and lawful men, to wit, Henry F. Tallman, George A. Root, John C. Turner, James M. Barnes, John Barton, Thos. J. Kirk, Bernard Horan, A. B. Cook, Charles Bordner, Alexander E. Myers, L. P. Barry, and Thomas W. Tomlinson, who are duly elected, empaneled, and sworn herein a true verdict to render according to the evidence, who, after listening to the evidence by the parties adduced, arguments of counsel, and charge of the court, retire to their room to consider of their verdict, and afterwards return into court and render their verdict, and upon their oath do say: We, the jury, find the defendant guilty as charged in the second count of the information; whereupon the defendant, by his counsel, moves the court for a new trial of this cause.

And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES
 vs.
 CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

This cause coming on to be heard upon the motion of the defendant for a new trial hereof, come the parties, by their attorneys, and the defendant in his own proper person, and after arguments of counsel and due consideration, it is ordered by the court that the said motion be, and the same is hereby, overruled; to which ruling of the court the defendant, by his counsel, duly excepts.

And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES
vs.
CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

Come the parties, by their attorneys, and the defendant in his own proper person, and the defendant, by his counsel, moves the court for a judgment in favor of the defendant *non obstante veredicto*, and after arguments of counsel and due consideration, it is ordered that said motion be, and the same is hereby, overruled; to which ruling of the court the defendant, by his counsel, duly excepts.

20 And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES
vs.
CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

This cause coming on to be heard upon the motion of the defendant in arrest of the judgment of the court herein, come the parties, by their attorneys, and the defendant in his own proper person, and after arguments of counsel and due consideration, it is ordered by the court that the said motion be, and the same is hereby, overruled; to which ruling of the court the defendant, by his counsel, duly excepted.

And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable Peter S. Grosscup, judge, to wit:

THE UNITED STATES
vs.
CHARLES H. INGWERSEN. } 2946. Vio. Int. Rev. Laws.

Come the parties, by their attorneys, and the defendant in his own proper person, to have the sentence and judgment of the court pronounced upon him, he having heretofore, to wit, on the 6th day of December, A. D. 1898, one of the days of this term of this court, been adjudged guilty by a jury, in due form of law, as charged in the second count of the information filed herein against him; and, the defendant being asked by the court if he had anything to say why the sentence and the judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered by the court, and as the sentence and judgment of the court upon the verdict of guilty so rendered herein by the jury, as aforesaid, that the defendant, Charles H. Ingwersen, forfeit
21 and pay to the United States a fine in the sum of five hundred dollars.

It is further ordered by the court that the said defendant stand committed to the county jail of Cook county, Illinois, until said fine is paid or he is otherwise discharged by law.

And afterwards, to wit, on the 6th day of December, A. D. 1898, there was filed in the clerk's office of the district court of the United States of America for the northern district of Illinois the defendant's petition for writ of error and supersedeas and to be admitted to bail; which said petition is in the words and figures following, to wit:

22 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the District Court of the United States for the Northern District of Illinois, Northern Division.

UNITED STATES }
vs. } No. 2946.
CHARLES H. INGWERSEN. }

Defendant's Petition for Writ of Error and Supersedeas and to be Admitted to Bail.

The petition of Charles H. Ingwersen, defendant, sheweth unto the court that a final judgment was entered in the above-entitled cause on the sixth day of December, 1898, whereby it was adjudged that this defendant was guilty of selling certain merchandise, to wit, live stock, at a place similar to an exchange, as charged in the second count of the information herein, and it was then and there adjudged that the said acts of the defendant were contrary to the certain act of Congress in said second count of said information mentioned, and this defendant was then and there sentenced by this honorable court to pay a fine of five hundred dollars and stand committed until the same should be paid.

Your petitioner further states that he has assigned errors upon the record in said cause specifying errors, as he alleges, in
23 the record and judgment aforesaid.

He therefore prays that this honorable court will permit him to sue out a writ of error to cause the said judgment to be reviewed by the Supreme Court of the United States, and that the court will cause said writ of error to supersede said judgment and make the said writ of error a supersedeas and admit this defendant to bail during the pendency of said writ of error on such terms as may be just and according to law.

CHARLES H. INGWERSEN,
By JOHN S. MILLER AND
MERRITT STARR, *His Attorneys.*
JOHN S. MILLER,
MERRITT STARR,

Attorneys for Defendant, Plaintiff in Error.

GEORGE R. PECK,
JOHN S. MILLER,
MERRITT STARR,
Of Counsel.

Endorsed: No. 2946. U. S. vs. Charles H. Ingwersen. Defendant's petition for writ of error, &c. Filed December 6th, A. D. 1898.

And afterwards, to wit, on the 6th day of December, A. D. 1898, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, judge, to wit:

24 THE UNITED STATES }
 vs. } 2946. Vio. Int. Rev. Laws.
 CHARLES H. INGWERSEN. }

Now, on this 6th day of December, A. D. 1898, come again the parties to this cause, the United States of America, by John C. Black, Esq., district attorney, and Charles H. Ingwersen, by Merritt Starr, his attorney, and the petition of Charles H. Ingwersen, defendant, for writ of error, and that the same be made supersedeas and to be admitted to bail, coming on to be heard, and the court, having heard the said petition and the proofs and arguments adduced and being advised in the premises, doth here now order that the writ of error issue herein, and that the same be made a supersedeas, and that the judgment herein be superseded and suspended and the defendant admitted to bail pending the hearing of said writ of error upon his filing herein a supersedeas bond conditioned according to law, with good and lawful sureties, in the sum of \$750.00, and his bill of exceptions within twenty days from this date.

And afterwards, to wit, on the 10th day of December, A. D. 1898, there was filed in the clerk's office of the district court of the United States for the northern district of Illinois a supersedeas bond; which said supersedeas bond is in the words and figures following, to wit:

25 UNITED STATES OF AMERICA, }
 Northern District of Illinois, Northern Division, } ss:

We, Charles H. Ingwersen, as principal, and Charles W. Baker and Munson P. Buel, as sureties, jointly and severally acknowledge ourselves to be indebted to the United States of America in the sum of seven hundred and fifty dollars (\$750), lawful money of the said United States, to be levied of our goods and chattels, lands and tenements, if default shall be made in the conditions following:

Whereas, on the 6th day of December, A. D. 1898, at a term of the district court of the United States held in and for the northern district of Illinois, the above-named Charles H. Ingwersen was convicted on an information charging him with violating the revenue laws of the United States by unlawfully and knowingly selling and making a sale of certain merchandise, to wit, certain live stock, at a certain exchange or place similar to an exchange, to wit, at the Union stock yards at Chicago, in said northern district of Illinois, without affixing to the memorandum of said sale a United States

revenue stamp, as the revenue laws of the United States direct, and on the said 6th day of December, A. D. 1898, the said court pronounced judgment and sentence against the above-named

Charles H. Ingwersen;

26 And whereas a writ of error from such judgment has been allowed to the Supreme Court of the United States and a citation thereof signed and issued, and the said Charles H. Ingwersen having been allowed to give bail in the sum of seven hundred and fifty dollars (\$750) pending the determination of such writ of error:

Now, therefore, the condition of this obligation is such that if, upon the judgment of the Supreme Court of the United States upon such writ of error from the judgment of said district court of the United States as aforesaid, the said Charles H. Ingwersen shall personally appear before the said district court whenever and as soon as a judgment upon the mandate of the said Supreme Court shall be entered in said district court and then and there surrender himself to the marshal of the United States for the northern district of Illinois and abide the orders of the said district court and Supreme Court, then this obligation shall be void; otherwise to remain in full force and virtue.

CHARLES H. INGVERSEN.

CHARLES W. BAKER.

MUNSON P. BUEL.

[SEAL.]
[SEAL.]
[SEAL.]

Approved:

P. S. GROSSCUP,

United States District Judge.

Endorsed: No. 2946. United States vs. Charles H. Ingwersen. Superseded-as bond. Filed Dec. 10th, A. D. 1898. T. C. MacMillan, clerk.

27 Endorsed: No. 2946. The United States vs. Charles H. Ingwersen. Supersedeas bond. Filed Dec. 10th, A. D. 1898. T. C. MacMillan, clerk.

And afterwards, to wit, on the 10th day of December, A. D. 1898, the assignment of errors was filed in the clerk's office of the district court of the United States for the northern district of Illinois, said assignment of errors being in the words and figures following, to wit:

28

UNITED STATES OF AMERICA, } ss :
Northern District of Illinois, Northern Division,

In the District Court of the United States, Northern District of
 Illinois, Northern Division.

UNITED STATES }
 vs. } No. 2946.
 CHARLES H. INGWERSEN.

Assignment of Errors.

Now, on this 9th day of December, 1898, comes the above-named Charles H. Ingwersen, defendant, by John S. Miller and Merritt Starr, his attorneys, and says that the verdict, judgment, and sentence entered and rendered in the above-entitled action on the 6th day of December, A. D. 1898, are and each of them is erroneous and against his just rights.

And that in the foregoing record of proceedings there is manifest error in the following particulars, to wit :

First. The said information and the second count thereof, upon which said verdict, conviction, judgment, and sentence were rendered and entered, doth not charge or state any offense under the said act of Congress therein mentioned.

Second. The evidence doth not show that this defendant
 29 committed any offense under the said act of Congress in said information and the second count thereof mentioned.

Third. The said act of Congress mentioned in said information and in the second count thereof and the tax imposed thereby and the provisions of said act do not apply to the said sale or agreement of sale or agreement to sell, mentioned in the said second count, or any of them.

Fourth. The evidence shows that the transaction, a sale, agreement of sale, and agreement to sell, made by said defendant, as shown by the evidence, is not within the provisions of said act of Congress in said information mentioned and is not subject to the said tax imposed thereby.

Fifth. The said act of Congress in the said second count of said information mentioned and the provisions thereof in said second count of said information mentioned are in violation respectively of the provisions of the Constitution of the United States and are void.

Sixth. The said act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," and in said second count of said information mentioned, is in violation of section 8 of article 1 of the Constitution of the United States, which provides, among other things, as follows :

"ARTICLE I, SECTION 8. The Congress shall have power—

30 "First. To pay and collect taxes, duties, imposts and excises, to pay the debt, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

And this defendant says that said act of Congress imposes or purports to impose a duty, impost, and excise which is not uniform throughout the United States.

Seventh. The said act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," and in said second count of said information mentioned, is in violation of section 9 of article I of the Constitution of the United States, which provides, among other things, as follows:

"ARTICLE I, SECTION 9. * * * Fourth. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

And this defendant says that said act of Congress imposes or purports to impose and lay a direct tax, which is not in proportion to the census or enumeration by said Constitution of the United States, provided for and directed to be taken.

Eighth. The said act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," and in said second count of said information mentioned, is further in violation of section 9 of article I of the Constitution of the United States, which provides, among other things, as follows:

31 "ARTICLE I, SECTION 9. * * * Fifth. No tax or duty shall be laid on articles exported from any State."

And this defendant says that said act of Congress purports to lay a tax or duty upon articles exported from any State and from the State of Illinois.

Ninth. That said act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," and in said second count of said information mentioned, is in violation of section 2 of article I of the Constitution of the United States, as the same is amended by the second section of the XIV amendment to said Constitution of the United States; which said section of said article I provides, among other things, as follows:

"ARTICLE I, SECTION 2. * * * Third. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons;" and which XIV amendment provides, among other things, as follows:

"ARTICLE XIV, SECTION 2. Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State, excluding

Indians not taxed ; " and this defendant says that said act of Congress purports to lay a direct tax, which is not apportioned among the several States, as required by said section 2 of article I and said XIV amendment.

Tenth. The provisions of said act of Congress approved June 13, 1898, which by said information and the second count thereof this defendant is accused of violating, are those contained in the first paragraph of section 6 of said act, reading as follows:

"SEC. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party, who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule."

And the provision of Schedule A to said act reading as follows:

"Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each one hundred dollars in value of said sale, or agreement of sale, or agreement to sell, one cent, and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, one cent: Provided, that on every sale or agreement of sale, or agreement to sell, as aforesaid, there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps, in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or any one who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof, as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court."

And this defendant shows that the sale, agreement of sale, or agreement to sell, mentioned in the second count of said informa-

tion and in the evidence in this case was not made at any exchange, or board of trade, or other similar place.

Eleventh. This defendant shows that the offense of which the defendant was found and adjudged guilty by the judgment of the court, in the foregoing record set out, was the making of a sale of certain merchandise, to wit, live stock, at a place similar to an exchange or board of trade; and this defendant shows that the provisions of said act (quoted in the assignment of error numbered tenth above) under which said judgment was rendered are void for uncertainty. Said words "or other similar place" in said act contained do not define and describe any place or places or kind or kinds of place with sufficient certainty to describe or define or create any offense, or part of any offense, or impose any obligation upon this defendant.

Twelfth. The court erred in not sustaining and in overruling the motion of this defendant to quash the information and said second count thereof.

35 Thirteenth. The court erred in overruling and in not sustaining the demurrer of this defendant to said information and to the second count thereof.

Fourteenth. The court erred in sustaining the objection on behalf of the Government, viz., the United States, to the following question asked of the witness Baker by counsel for the defendant, namely, "Q. I will ask you to state, then, Mr. Baker, from your knowledge of those two places, whether the Union stock yards at Chicago, Illinois, is a board of trade, or exchange, or place similar to the board of trade."

Fifteenth. The court erred in sustaining the objection on behalf of the Government, viz., the United States, to the following question asked of the witness Baker by counsel for this defendant, namely, "Q. Is the Union stock yards, at Chicago, Illinois, a place similar to such an exchange?"

Sixteenth. The court erred in refusing to grant the request of the counsel for the defendant and give to the jury the instructions reading as follows:

"The court instructs you, gentlemen of the jury, that the act of Congress approved June 13, 1898, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes,' in so far as it purports to apply to sales, or agreements to sell, or agreements of sale, of live stock at the Union stock yards in Chicago, Illinois, conducted as the evidence shows the sales mentioned in the information were conducted, is in violation of section 8
36 of article I of the Constitution of the United States, requiring that all duties and imposts and excises shall be uniform throughout the United States, and is also in violation of section 9 of article I of the Constitution of the United States, requiring that no direct tax shall be laid unless in proportion to the census or enumeration thereinbefore directed to be taken, and that no tax or duty shall be laid upon articles exported from any State."

Seventeenth. The court erred in refusing to grant the request of

counsel for the defendant to give to the jury the instruction reading as follows :

"The court instructs you, gentlemen of the jury, that the Union stock yards in Chicago, Illinois, and the pens enclosed therein, and which have been referred to in the evidence in this cause as constituting the place at which the sales, agreements of sale, and agreements to sell, and each of them, mentioned in the information herein, were made, do not constitute an exchange or board of trade or other similar place within the meaning of Schedule A of the certain act of Congress approved June 13, 1898, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes.'"

Eighteenth. The court erred in refusing to grant the request of counsel for the defendant to give to the jury the instruction reading as follows :

37 "The court instructs you, gentlemen of the jury, that, in view of all the evidence in this case, the sales, agreements of sale, and agreements to sell, in the information mentioned, were not nor was either of them a sale, agreement of sale, or agreement to sell any products or merchandise at an exchange or board of trade or other similar place within the meaning of Schedule A of the act of Congress approved June 13, 1898, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes.'"

Nineteenth. The court erred in giving to the jury the following instruction :

"The law question in this case, gentlemen of the jury, was submitted to the court on the demurrer to the information. The only question was whether these stock yards was an exchange or a place similar to an exchange. If it was, the transactions on the stock yards are taxable under the revenue law. The court has held that it was such a place, and this proceeding is only to carry out the judgment of the court, so that an appeal can be taken and the question determined by the Supreme Court. For that reason I will instruct you that it is your duty—that the evidence in this case shows, that this defendant has filed, that the stock yards is a place similar to an exchange, and transactions on the stock yards must be evidenced by a memorandum in writing. There was such a memorandum, but it was not stamped. The failure to stamp it is a violation of the law."

38 Twentieth. The court erred in giving to the jury the following instruction :

"I instruct you to return a verdict of guilty. Is that your verdict?"

Twenty-first. The court erred in overruling the motion of the defendant to set aside the verdict and grant a new trial.

Twenty-second. The court erred in overruling the motion of this defendant that judgment be entered for the defendant, notwithstanding the verdict.

Twenty-third. The court erred in overruling the motion of the defendant in arrest of judgment, and that the judgment be arrested

Twenty-fourth. The court erred in rendering the judgment against the defendant in this cause.

Twenty-fifth. The court erred in ordering that the defendant stand committed until he should pay the fine imposed by the judgment of the court.

Twenty-sixth. And for that there are other manifest errors appearing in the said transcript and record of the proceedings in said court. Wherefore, and for each of said errors, this plaintiff in error and defendant in the court below prays this court that said judgment of

the court below may be reversed, set aside, and held for naught, and for such other judgment and order in respect thereto as may be according to the law.

Respectfully submitted.

CHARLES H. INGWERSEN,
By JOHN S. MILLER AND
MERRITT STARR,

His Attorneys.

JOHN S. MILLER,
MERRITT STARR,
*Attorneys for Charles H. Ingwersen,
Defendant, Plaintiff in Error.*

GEORGE R. PECK,
JOHN S. MILLER,
MERRITT STARR,
Of Counsel.

Endorsed: No. 2946. Term No., —. In the U. S. district court, northern district of Illinois, northern division. *United States vs. C. H. Ingwersen.* Assignment of errors. Filed this 10th day of December, A. D. 1898. T. C. MacMillan, clerk. Peck, Miller & Starr, counselors-at-law, 913-916 Monadnock block, Chicago.

And afterwards, to wit, on the 10th day of December, A. D. 1898, there was filed in the clerk's office of the district court of the United States for the northern district of Illinois a bill of exceptions; which said bill of exceptions is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

In the District Court of the United States, Northern District of Illinois, Northern Division.

UNITED STATES }
vs. } No. 2946.
CHARLES H. INGWERSON. }

Bill of Exceptions.

Be it remembered that heretofore, to wit, on the sixth day of December, A. D. 1898, being one of the days of said term of said court,

before the Honorable Peter S. Grosscup, one of the judges of said court, presiding, and a jury, this cause came on for trial upon the pleadings heretofore filed herein.

Whereupon the following proceedings were had and testimony taken.

Present: John C. Black, Esq., on behalf of the Government; Merritt Starr, Esq., representing Peck, Miller & Starr, on behalf of the defendant.

41 W. B. INGWERSEN, called as a witness on behalf of complainant, being first duly sworn, was examined in chief by General Black and testified as follows:

Q. What is your name?

A. W. B. Ingwersen.

Q. Where do you live?

A. 4919 Forestville avenue, this city.

Q. How long have you lived here?

A. Twenty-five years.

Q. Do you know Charles H. Ingwersen?

A. Yes, sir.

Q. Do you know the firm of Ingwersen Brothers?

A. Yes, sir.

Q. Are you a member of that firm?

A. No.

Q. Who constitute it?

A. The firm of Ingwersen Brothers?

Q. Yes.

A. That is H. C. Ingwersen and C. H. Ingwersen.

Q. H. C. and C. H.?

A. Yes, sir.

Q. C. H. is Charles H.?

A. Charles H.; yes, sir.

Q. Was Charles H., to your knowledge, acting as agent for Ingwersen Brothers on the 11th of August, this year?

Q. Do you know whether he made a sale on that date for Ingwersen Brothers to one Edward Egan, as agent for T. C. Eastman and Company?

A. Well, in relaity that should be Ingwersen Brothers and Smith he acted as agent for.

Q. Ingwersen Brothers and Smith it is?

A. Yes, sir; he did.

Q. Was this Edward Egan agent for T. C. Eastman and Company?

A. Yes, sir.

42 Q. Is Ingwersen Brothers and Smith a corporation under the laws of the State of Illinois?

A. It is.

Q. For the purpose of carrying on the business of a live-stock commission merchant and dealer in live stock?

A. Yes, sir.

Q. Is the T. C. Eastman Company a corporation existing under and incorporated under the laws of the State of New York?

A. Yes, sir.

Q. For the purpose of dealing in live stock?

A. It is.

Q. Now, what did Charles H. Ingwersen, as such agent as you have described, sell to one Edward Egan, as such agent as you have described, one hundred and thirty head of cattle?

A. He did.

Q. Do you remember their weight? Was it 186,170 pounds?

A. Yes, sir; I think it was.

Q. To your best knowledge, was that the weight?

A. Yes, sir.

Q. Do you remember the price paid per hundred pounds for that live stock?

A. Yes, sir.

Q. What was it?

A. Five thirty-five per hundred pounds.

Q. Did this sale embrace any other property?

A. Well, yes, there were sixteen head and six head.

Q. Six head. Do you remember the weight of the six head?

A. No, I don't.

Q. Is it your best recollection that they weighed 7,830 pounds?

A. Yes, sir.

Q. Do you remember the price at which they were sold?

43 A. I think five cents; five dollars per hundred.

Q. Four seventy-five per hundred?

A. Yes, sir; that is right.

Q. What sort of sale was this—for present delivery or for future?

A. For present delivery.

Q. Had these cattle and merchandise lately been consigned to Ingwersen Brothers and Smith?

A. Yes, sir.

Q. Upon commission for account of the owner?

A. Yes, sir.

Q. Do you remember his name?

A. Yes, sir.

Q. Give it.

A. A. B. Bell.

Q. Where did he reside?

A. Ida Grove, Iowa.

Q. Was the merchandise so sold delivered?

A. Yes, sir.

Q. In pursuance of the sale then and there?

A. Yes, sir.

Q. Between the commission merchants and the brokers you have mentioned?

A. Yes, sir.

Q. Where did this delivery and sale take place?

A. At the Union stock yards.

Q. State whether or not any memorandum or evidence of the sale was reduced to writing?

A. Yes, sir; there was a memorandum made.

Q. Of this sale?

A. Yes, sir.

Q. Identify, if you can, the ticket that you speak of or the memorandum.

(Witness hands memorandum to counsel.)

General BLACK: If your honor please, I will have to go and get the statute. I don't know about this.

44 Q. Do you know one David Moog?

A. Yes, sir.

Q. Are you aware of a sale made by Charles H. Ingwersen to one David Moog?

A. I am.

Q. On October 14, 1898?

A. Yes, sir.

Q. Where did that sale take place?

A. At the Union stock yards.

Q. What did it consist of?

A. Nineteen cattle; weight, 22,280 pounds, at five twenty-five per hundred.

Q. Do you know whether or not any written memorandum was made of that sale?

A. No, I do not.

Q. Examine the article that I now show you and then make your answer (handing paper to witness).

A. This memorandum is made by the stock yards company. I do not know as any memorandum further than this was made by our firm.

Q. Was that made by your firm?

A. No, sir; that is made by the Union Stock Yards and Transit Company.

Q. Was it made for your firm?

A. Yes, sir.

Q. Was it delivered to your firm or by your firm to Moog?

A. It was.

Q. At the time of the sale?

A. Yes, sir.

Q. Was it sold for present delivery?

A. It was.

Q. What was the price agreed upon?

A. Five twenty-five per hundred pounds.

Q. What was the total weight of the cattle sold?

A. 22,280.

Q. How many head of cattle were there involved?

45 A. Nineteen cattle.

Q. Had that stock been consigned to Ingwersen Brothers and Smith?

A. It had.

Q. For sale on commission?

A. Yes, sir.

Q. On whose account?

A. On account of H. Hughes, Victor, Iowa.

Q. Of Hardwick or Victor?

A. Probably it was shipped from Hardwick. The gentleman lives at Victor.

Q. Was the merchandise and cattle delivered on that sale?

A. It was.

Q. To said Moog?

A. Yes, sir.

Q. Where did all this take place?

A. At the Union stock yards, Chicago.

The COURT: Did he say there was no memorandum by either seller or buyer?

General BLACK: He said this memorandum was made——

The COURT: Oh, yes; I understood him to say that was made by the stock yards company. Was there any memorandum made by the seller or buyer?

The WITNESS: Not that I know of.

General BLACK: Other than this?

The COURT: Would he be in a position to know?

The WITNESS: Yes, sir; I would be in a position to know.

46 The COURT: There is no stamp on that one, then?

Q. After its execution, to whom was this memorandum handed by the weighmaster?

A. That was handed to Ingwersen Brothers and Smith.

Q. Was that there upon their memorandum?

A. Yes, sir.

Q. Is that in accordance with the usage of the stock yards company?

A. It is.

Q. Did they thereupon deliver this to Moog?

A. Yes, sir.

Q. It was their own memorandum, then, of delivery to Moog of this sale?

A. Yes.

Q. Do you know as a matter of fact whether they declined and refused to stamp that in pursuance of the revenue act?

A. I do.

The COURT: Did they refuse to?

The WITNESS: They refused to stamp that.

General BLACK: I offer that in evidence, your honor.

The COURT: Very well.

General Black: Gentlemen of the jury, the following is offered in evidence:

"Div. D, Union Stock Yards and Transit Co., scale 5.

"CHICAGO, 10, 14, 1898.

"I hereby certify that I have this day weighed from Ingwerson Bros. S. to D. Moog, 19 cattle, 22,280 lbs., 5 $\frac{1}{4}$, 1,169.70.

"SIBLEY,

"Weighmaster."

47 General BLACK (to the jury): You will observe that it is not stamped.

Q. I want to go back to this first memorandum for one minute. Was this delivered to Eastman and Company?

A. It was delivered to their agent, E. Egan.

General BLACK: Your honor, I will have to enter a *nolle* as to the first count of this information. That leaves the case upon the second count.

The COURT: Very well.

No cross-examination.

C. W. BAKER, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by General Black and testified as follows:

Q. Mr. Baker, what is your residence, age, and occupation?

A. Chicago, Illinois; age, forty-two; engaged in the live-stock business at the Union stock yards, Chicago, Illinois.

Q. How long have you been engaged at the stock yards in business?

A. Twenty-odd years.

Q. I will get you to read to the jury Exhibit A, attached to this information, and state, if to your knowledge it is true description of the Union stock yards—a material description.

A. (Reading:)

"EXHIBIT A.

48 "The Union stock yards described in this information, at the respective times therein mentioned and theretofore and since, covered and cover 335 acres of land situated between 39th street and 47th street and Halsted street and Ashland avenue, in the city of Chicago, in the county of Cook and State of Illinois, of which 200 acres are covered by pens, which are made by fences surrounding and enclosing the same, there being alleys running through the yards separating the pens, into which alleys gates lead from the pens. The number of the pens is about five thousand, and they are in size respectively from eight feet square to fifty feet square. Railway tracks belonging to and operated by the Chicago Junction Railway Company, which connect with all the lines of railway to the city of Chicago, extend into the yards, over which cattle, hogs, and other live stock received at or shipped from the Union stock yards are carried. Upon the arrival of cattle, hogs, or

other live stock at the Union stock yards consigned to the commission merchant at the Union stock yards, such cattle, hogs, or other live stock are placed by the owner or consignee thereof, or his or its agents, in one or more of the pens, and are there cared for, fed, and watered by such owner or consignee. Any person is at liberty to send, take, or receive cattle, hogs, or
49 other live stock into the Union stock yards, and there place, or have the same placed, in a pen or pens, care for the same, and there sell any cattle belonging to him or which he had the right to sell. Any person has access to the pens containing cattle, hogs, or other live stock for the purpose of buying the same, and has liberty to purchase or negotiate for the purchase thereof. Sales of cattle, hogs, and other live stock in the yards are at private sale.

"Commission merchants having cattle, hogs, or other live stock in a pen or pens in the yards seek and solicit a buyer therefor, and when a proposed buyer is so found take him to the pens in which such live stock is contained, and there exhibit such live stock, and to such proposed buyer or to any person who may come to said pen and who may desire to buy, such live stock is sold in the pen in which they are yarded. Sales of cattle, hogs, and sheep in the yards are by weight, and upon a sale thereof being made, such live stock is taken by the owner, or commission merchant having charge thereof, from the pen in which it is confined to a scale or scales in the yards and belonging to the Union Stock Yard and Transit Company, and are there weighed by a weighmaster employed by the Union Stock Yard and Transit Company and in charge of
50 the scale in which said live stock are weighed, and the weight of such live stock is thereby determined as the weight for which the purchaser pays upon his purchase, and the amount of the purchase price at the price per pound or per hundred pounds fixed in such sale is thereby determined."

Yes, sir; that is a correct statement.

The COURT: That is the method of doing business in the stock yards, is it?

The WITNESS: That is, substantially.

The COURT: And a correct description of the stock yards?

The WITNESS: Yes, sir; so far as it goes.

Gen. BLACK: Will it be admitted upon the hearing of this cause that Exhibit B, attached to the information, is a correct copy of the charter and by-laws of the Union Stock Yards and Transit Company of Chicago?

Mr. STARR: Yes, sir.

Q. Is that a correct copy of the charter and by-laws?

The COURT: Any more particular proof is waived.

A. Yes, sir; I think it is.

Gen. BLACK: That is our case, your honor.

51 Cross-examination.

By Mr. STARR:

Q. Mr. Baker, do I understand you to say you are acquainted with the conditions of business at the stock yards?

A. Yes, sir.

Q. I will ask you to state whether you are acquainted with business on boards of trade and on the Chicago board of trade.

A. Somewhat; yes, sir.

Q. Had some experience there?

A. I was on the board for a number of years before going to the stock yards.

Q. I will ask you now to give us a short general description of the method of doing business on the board of trade.

A. Well, there are a number of lines of business that are done on the board.

Q. What kind of a place is it?

A. The board of trade is a room or hall provided by the chamber of commerce, I believe—it was when I was there—in which are congregated all the members and their duly accredited employes.

Q. What do they do there?

A. They engage in the business of buying and selling cereals and provisions; in the case of cereals, in some instances, by samples, and in buying and trading, in the case of provisions, by option trading, trading in futures.

Q. Do they have the goods which are the subject of the sale there present at the exchange or board of trade?

A. They do not.

52 Q. How is it at the stock yards, do they have the goods which are the subject of the transaction present at the place?

A. In every instance.

Q. You spoke, Mr. Baker, of this hall of the board of trade being open to the members of the board of trade and to their duly accredited employes. I will ask you to state whether the hall of the board of trade or floor where their trades are carried on is open to the public.

A. It is not.

Q. I will ask you to state what the fact is as to the Union stock yards and their pens for the purposes of trading.

A. It is open to and visited by people from all portions of the world.

Q. You say visited?

A. Yes, sir; visited. I would not want to say that people from all over the world dealt there, but anybody is at liberty to deal there; it don't make any difference where he comes from.

Q. Either as a buyer or as a seller of live stock?

A. Yes, sir.

Q. What is the fact as to such liberty existing or not on the board of trade?

A. Such liberty does not exist on the board.

Q. What is the condition at the board of trade in that respect?

A. Any business transacted on the board of trade must be transacted by or through a member of the board.

Q. What constitutes a member or membership on the board of trade? How does a person get that?

53 A. Makes application in form prescribed by the directors, is balloted upon by the board of directors, and if elected signs the constitution and by-laws, and either takes out a new membership or has an unforfeited membership transferred to him in his name and signs an agreement to abide by all the rules and regulations governing members.

Q. Does a member pay an initiation fee?

A. He does in case of the purchase of a new membership.

Q. Do you remember what that is?

A. I do not now; I could not state, sir.

Q. To the best of your recollection, what was it at the time when you were on the board?

A. I think it was five hundred dollars then.

Q. Five hundred dollars?

A. This was quite a number of years ago; twenty years ago.

Q. You spoke of membership certificates being transferred by a man who has one to some one else who wishes to become one. I will ask you to state whether such memberships are saleable and transferable for money?

A. Yes, sir.

Q. Have a market value of themselves?

A. Yes, sir.

Q. Is there any such thing as having a membership in the Union Stock Yards Company?

A. No, sir.

Q. I will ask you to state, then, Mr. Baker, from your knowledge of these two places, whether the Union stock yards at Chicago, Illinois, is a board of trade or exchange, or place similar to the board of trade.

54

General BLACK: I object to the question.

The COURT: The objection is sustained.

To which ruling of the court defendant, by his counsel, then and there excepted and still excepts.

Q. In order to place each of the different questions by itself, I will ask you to state whether, from your knowledge as a merchant in Chicago and a man engaged in these lines of business, you know what an exchange is; you can tell us what an exchange is? A place for doing business?

General BLACK: I object to that question.

The COURT: Well, if he knows what an exchange is, he may give us the facts as to what an exchange is. He may give us the facts. I had supposed he had done that.

Mr. STARR: I will supplement that question and add to the question as it stands, this:

Q. Is the description which you have given of the board of trade a fair description of an exchange?

General BLACK : I object.

The COURT : I will let him answer that question.

A. In my opinion, it is.

Q. Is the Union stock yards at Chicago, Illinois, a place similar to such an exchange?

General BLACK : I object.

55 The COURT : I think that is a matter for the jury to determine on the facts. I will sustain the objection.

Mr. STARR : I offer his testimony as an expert. It is understood, General Black, that the rulings of the court, so far as they go, are excepted to, and we will be allowed to preserve our exceptions.

To which last ruling of the court the defendant, by his counsel, then and there excepted and still excepts.

Q. You have stated that the Union stock yards are open to the world, and that the board of trade is a privileged place. You have stated that at the stock yards the goods which are dealt in are present on the spot, and that they are not so at the board of trade. I will ask you to state, Mr. Baker, whether on the board of trade either the board of trade itself or the merchants who deal thereon have a responsibility for the care and safe keeping of the property dealt in while it is the subject of the deal?

General BLACK : Objected to.

The COURT : Objection overruled.

A. No ; they have not.

Q. What is the fact as to the responsibility for the care and safe keeping of the property dealt in at the stock yards?

General BLACK : The same objection.

The COURT : Objection overruled.

56 A. The commission man, receiver, or consignee is responsible for the custody and care of the stock.

Q. I will ask you whether the care of the stock implies special duties and responsibilities ; if so, what are they ?

General BLACK : I object to that.

A. To feed and care for them and see that they do not get sick.

Q. Who feeds and cares for the cattle at the stock yards ?

A. The commission man—consignee.

Q. He sees that they are fed, watered, and cared for ?

A. Personally attends to it.

Q. Personally attends to that ?

A. Yes, sir.

Q. That is part of his duty at the yards ?

A. Yes, sir.

Q. Is there any duty corresponding to that that falls on the merchant on the board of trade ?

A. There is not.

Q. I will ask you, Mr. Baker, to describe—you have stated that the board of trade is a hall or floor. How big a place is it?

A. I am not much of an architect, but I should say two hundred by three hundred feet square.

Q. That is the outside dimensions of the building?

A. Yes, sir.

Q. And the hall itself in which the trading goes on is, say, half that?

A. Just about, I guess.

Q. Well, then, are the trades on the board of trade carried on orally and within earshot of each other all the time?

57 A. They are within the confines of what is known as the exchange or board of trade hall.

Q. You have already given the dimensions of the stock yards?

A. No; I think not.

General BLACK: In the exhibit?

The WITNESS: Oh, yes.

Q. Is there any consumption of the goods dealt in at the board of trade on the board?

A. No, sir.

Q. Is there any consumption of the goods dealt in at the stock yards, there in the yards?

A. Yes, sir.

Q. What was it—what consumption goes on of goods dealt in at the stock yards?

A. Probably one-half of the receipts of the Union stock yards. Live stock is taken, immediately upon its purchase by the buyer stationed at the said yards, to the packing-houses or abattoirs located at said yards and there slaughtered and dressed ready for consumption.

Q. Then the keeping and care—feeding and watering of the live stock—is that a responsibility incident to the consumption of the live stock there at the yards?

A. It is.

The COURT: Also to the transshipment?

The WITNESS: Yes, sir.

The COURT: As to the other half of it?

The WITNESS: I said about one-half of it, your honor, I think.

Q. Is there anything corresponding to that on the board of trade?

A. There is not.

58 The COURT: No watering of stock on the board of trade?

The WITNESS: There wasn't when I was there.

Mr. STARR: That is all.

Redirect examination.

By General BLACK:

Q. Mr. Baker, do you know of trades on the board that do not involve the ownership of the property traded in? I mean legally. Do you know of any broker selling stuff he don't have?

A. Yes, sir.

The COURT: Where; on the board of trade or the stock yards?

The WITNESS: The board of trade.

Q. Is it not a fact that he is presumed at the time he makes the trade that he has got the stuff?

A. There is such a presumption; yes, sir.

Q. That is all a presumption?

Mr. STARR: I object to his cross-examining the witness as to presumptions of law.

Q. I mean that is something that goes with the trade. If a man offers five thousand bushels of oats, and it is bought by another man on the board of trade, it is the understanding in law between those two, isn't it, that he has got it?

Mr. STARR: I object to what is understood in law.

The COURT: Certainly.

Mr. STARR: It isn't understood so at all.

59 General BLACK: Are you testifying?

Mr. STARR: I am as to what the presumptions of law are. I think you and I are better judges of that than Mr. Baker is.

The COURT: I don't quite see the importance of it.

General BLACK: It may not be important, yet I would like to have it in the record. I think it is a good deal of importance.

Q. Are there not many sales take place on the board where the stuff is really owned by the party undertaking to sell—pretending to sell—undertaking to sell?

A. Very seldom, I think.

Q. Doesn't it happen very often?

A. No; I think it is very seldom.

Q. Do you mean to say the sales are all stuff that doesn't really exist?

A. No—excuse me; I didn't understand your question. You say sales by the party that own the stuff?

Q. Yes; they own the stuff very frequently.

The COURT: Don't warehouse people sometimes sell on the board of trade, men who have stock in the warehouses?

A. They may in some instances, but that is not the bulk of the trade.

Q. I am not asking you for the bulk of the trade.

A. That is what I was—

60 Q. Don't it very often happen that men sell there when they have got the stuff to sell?

A. Yes.

Q. And men buy when they buy the stuff that is sold?

A. Yes.

Q. Isn't it true, in regard to these warehouse certificates, they each, every one of them, represent actual grain?

A. Yes, sir.

Q. So that very many of the transactions that take place on the

board of trade are transactions for present delivery of actual stuff by certificate of its warehousing?

A. Yes; that is correct.

Q. Now, you stated that there — no sales of stuff in the stock yards—I want you to be careful about this—that there were no sales of stuff in the stock yards that wasn't actually there?

A. No live stock.

Q. Is it true that there are sales going on there of produce or provisions, whatever it may be, where the stuff is not actually in sight, between the buyers? Don't men sometimes sell stuff by samples of the stuff on hand?

A. No, sir.

Q. You don't know of it?

A. Never.

Q. You do not know that that is true?

A. I know it is not true.

Q. That they never buy nor sell stuff by sample of lots on hand, so many bullocks of such a grade?

A. No, sir.

Q. A man from Colorado, coming in here with a herd of cattle, would not agree to deliver one hundred head of the same
61 grade on a later date?

A. No, sir.

Q. You know that?

A. Yes, sir.

Q. Are you familiar with any men from Colorado who have been making sales there?

A. I know a good many from there.

Q. Do you know of any that are making sales of any kind?

A. Of such a kind?

Q. Yes.

A. No, sir.

Q. Or of any kind?

A. I don't know as I can call their names off-hand. I know a good many shippers from Colorado.

Q. You said, in answer to a question that was put to you, that there was no delivery of stuff on the board of trade. That is not true, is it?

A. No delivery of stuff?

Q. Yes.

A. I do not know that I understand that question.

Q. That was what you said in answer to Mr. Starr, that there was no delivery.

The COURT: What you meant was no manual delivery on the board.

A. I do not know what the question was. It may have been in regard to option trading.

Q. No; that wasn't in regard to option trading. You said there was no delivery of stuff on the board.

A. No actual delivery.

Q. There is a delivery of certificates?

62 A. In some instances there is a delivery of the certificates representing the stuff.

Q. This matter of consumption in the stock yards of the stuff sold there, it is taken out from where the sales are made, is it not? A man buys stuff to slaughter, he takes it away from where it is bought?

A. Yes, sir; it is only a few hundred yards.

Q. If he wants to ship it, he takes it away?

A. Yes, sir.

Q. If he buys grain on the board of trade, he takes his certificate and takes it away to ship?

A. He must take it to some transportation company.

Q. So that they are just about alike?

A. I do not think so.

Q. They do the same thing, don't they?

A. I do not think they do.

The COURT: The facts are what we are after here, not the argument.

Q. Just one other question. I understood you to say that trading on the board of trade was within ear-shot and hearing substantially of everybody within the hall. Did you so state?

A. Of those who might desire to hear who were in the hall.

Q. Were you ever there when the pit was pretty lively?

A. Yes; I have been.

Q. Have you been able to hear yourself, let alone your next-door neighbor?

63 A. If I was inclined to hear something; if a man wanted to sell me something at less than I was bidding.

Q. You had to pay pretty close attention?

A. Yes; that is very true.

Q. And the trade, after all, was between you and the man that traded with you?

A. Yes; except a man might be listening.

Q. Not as a participant?

A. No, sir.

Q. Individual trades are just the same as they are down on the stock yards?

A. No. It was my intention to convey this: Sales on the board of trade are public sales—that is, any member or his employé, if present or having the desire to, may hear the sales. Sales at the stock yards are private sales.

Q. But if a man is engaged in it and his employés want to hear it they can, can't they?

A. No, sir.

Q. Why?

A. Because they don't allow it, buyers and sellers.

Q. Can't a couple of men go off in a corner on the board of trade and make the same sale?

A. They can, but they don't.

Q. If they want to, down in the stock yards, they can enlighten their employes and friends of the contents of the trade?

A. Yes, sir; nothing to prevent.

The COURT: What number of cattle are brought into these stock yards every year?

The WITNESS: Two and one-half million cattle and eight million hogs last year, I think.

64 The COURT: What proportion of the production of this western country is that?

The WITNESS: Well, I should be pleased to furnish the court some figures on the subject. I wouldn't want to answer it off-hand.

The COURT: I mean only approximately.

The WITNESS (after computation): Oh, one-fifteenth.

The COURT: Is there any other yard where so many cattle and hogs are sold?

The WITNESS: No, sir.

The COURT: It is the largest in that respect in the country?

The WITNESS: The largest stock yards in the world; yes, sir.

The COURT: About how many commission merchants are there at the stock yards?

The WITNESS: One hundred and ten firms; each firm is composed of one or more.

The COURT: How are they quartered there?

The WITNESS: They rent offices from the Union Stock Yards and Transit Company, who have provided an exchange building, located in the center of the yards.

The COURT: They are all in one building?

65 The WITNESS: Yes, sir.

The COURT: What proportion of these animals that are brought in are bought by the commission men?

The WITNESS: A very small proportion; I should say probably five to ten per cent. And in making that statement I wish to say that all the class, I think, that commission men buy are such as are known as stockers and feeders, which they purchase for their customers to take back into the country. In other words, a countryman will bring two loads of cattle to the stock yards to his commission man for sale, to handle. The countryman desiring to place more cattle on feed, he goes, in company with his commission man, to what are known as the stocker pens, feeder pens, and there buys some thin cattle and takes them back to his farm to feed them.

The COURT: Who buys the fat cattle?

The WITNESS: The eastern buyers located at Chicago and the slaughterers.

The COURT: How are the eastern buyers represented?

The WITNESS: They have their regular representatives here.

The COURT: Commission men?

The WITNESS: No, sir; they have——

The COURT: They have offices, too?

66 The WITNESS: Yes, sir.

The COURT: In the same building?

The WITNESS: Yes, sir.

The COURT: And they watch the shipments of the animals as they come in, and make their purchases?

The WITNESS: Yes, sir. The custom is, for a commission man who receives the live stock, if he is a judge of his business—when he receives ten car-loads of live stock, he knows about what class of buyers will handle each class, and he goes himself with his buyer, takes him to certain pens till he gets a certain price.

The COURT: What proportion of these animals are shipped to commission men?

The WITNESS: Oh, practically all—practically all.

The COURT: The commission men who have their offices in that building?

The WITNESS: Yes, sir.

The COURT: Is it a rare thing for the owner to bring in his own shipment?

The WITNESS: He very frequently consigns his stock to himself, then turns it over to a commission man for sale. In some few isolated instances sells it himself.

67 The COURT: So that really those one hundred and ten commission firms who occupy offices out there buy up the cattle over the country and sell it to the eastern buyer whose representative is there, and to the slaughter-houses?

The WITNESS: No; they receive it and sell it on commission.

The COURT: Yes—I mean they receive the cattle.

The WITNESS: Yes, sir.

The COURT: And sell it to those eastern houses?

The WITNESS: Yes, sir.

The COURT: And to the slaughterers?

The WITNESS: Yes, sir.

The COURT: That practically constitutes their business at the yards?

The WITNESS: Yes, sir; of course, there is some speculation there, as there always is around such market centers.

The COURT: Well, I do not think of anything else myself.

Recross-examination by Mr. STARR:

Q. Mr. Baker, let me ask you if a farmer from central Illinois should come up with a couple of hundred head of hogs, his own property, having them consigned to himself at the stock
68 yards, would they be taken any care of at the stock yards, even although the yards never had heard of him before?

A. Yes, sir.

Q. If he were to meet a buyer from Montreal, Canada, who paid him the currency for those hogs and took them away, would such a trade happen without the intervention of any commission man?

A. Yes, sir.

Q. Do such trades sometimes happen?

A. Yes, sir.

The COURT: How do the farmers get into the stock yards—what sort of application do they have to make to get in?

The WITNESS: None whatever, your honor. The farmer's live stock would be consigned to the stock yards. Take two cars of hogs, for instance, the stock yards company would receive that stock from the railroad company, place it in a suitable pen, and lock it up until the owner had identified himself and paid the freight charges. Then the stock would be turned over to him, then the gate would be unlocked, and he could sell to the buyers, effect a sale, constitute a delivery by the weighing of the stock.

The COURT: Is the stock yards also the owner of this terminal road that goes to the stock yards from the different railways?

The WITNESS: I believe the same stockholders are interested in both companies.

69 The COURT: Different companies?

The WITNESS: Yes, sir.

Q. You spoke, Mr. Baker, of a man going to the stocker pens and buying lean stock and shipping it out to a farm for the purpose of fattening; then, perhaps, he would ship it to Chicago to the yards for sale. I will have to ask you to take that transaction from its beginning and describe the operations that it would go through, the number of payments of money that would be made in the ordinary course of business in the handling of that stock from the time it is bought and shipped out to the farm, fattened; the buyer then consults the market, either by mail or by telegraph, until he finds the market suitable for his purposes for his sale, then ships it back, makes his sale of the stock, and gets his pay and deposits his money in the bank; just describe the number of operations he would go through.

General BLACK: Why not let your statement stand as his answer?

Mr. STARR: I thank the General for his suggestion.

Q. You may add to that by reference to the revenue law the number of times its stamp duties would be paid on the handling of that stock.

General BLACK: I will object to that as a matter of law.

The COURT: No; that part of it I will exclude.

70 Mr. STARR: Go on without that part of it; apply that after his other answer is in.

The COURT: There isn't more than one sale. Well, go on and describe the process.

A. From the time the countryman sells his fat cattle here in the yards, he goes with his commission man to the stocker pens and buys one or more loads of cattle as he sees fit. Those cattle are weighed and delivered to his commission man in the ordinary course of business. The commission man then delivers those cattle or the stock yards company delivers those cattle to the railway company, where they are placed on the cars and sent out to the home of the countryman.

Q. Bills of lading issued by the railroad company?

A. Oh, yes, sir; and bills of lading are issued, telegrams are sent, etc. The countryman takes those cattle and places them on his farm, on suitable feeding lots, and proceeds to feed and water the

cattle until they become ripened or fit for market. He wires his commission man perhaps on two or three different occasions before as to the condition of the market before he——

General BLACK: This is so clearly a hypothetical answer that I do not think it ought to go into the record.

The COURT: I do not see how it is going to help us any.
71 It may illustrate how the Government collects its taxes. I had occasion to sell a little property in the form of securities myself not long ago, and I found before I had sent all the telegrams connected with it, made a note or two, and drawn two or three checks, that I had paid the Government a good deal of money, too.

The WITNESS: I think, your honor, in this one transaction, I think there is some seventeen different taxes.

The above and foregoing is all the evidence offered or received on the hearing of this cause.

And thereupon the defendant moved the court and offered the motion that the court give the jury the following instruction, to wit:

The court instructs you, gentlemen of the jury, that, in view of all the evidence in this case, the sales, agreements of sale, and agreements to sell, in the information mentioned, were not nor was either of them a sale, agreement of sale, or agreement to sell any products or merchandise at an exchange or board of trade or other similar place within the meaning of Schedule A of the act of Congress approved June 13, 1898, entitled "An act to provide ways and
72 means to meet war expenditures, and for other purposes."

But the court refused to give the said instruction.

To which refusal of the court the defendant, by his counsel, then and there duly excepted and still excepts.

And thereupon the defendant, by his counsel, moved the court to give to the jury the following instruction:

"The court instructs you, gentlemen of the jury, that the Union stock yards in Chicago, Illinois, and the pens enclosed therein, and which have been referred to in the evidence in this cause as constituting the place at which sales, agreements of sale, and agreements to sell, and each of them, mentioned in the information herein, were made, do not constitute an exchange or board of trade or other similar place within the meaning of Schedule A of the certain act of Congress approved June 13, 1898, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes.'"

But the court refused to give the said instruction.

To which refusal of the court the defendant, by his counsel, then and there duly excepted and still excepts.

And thereupon the defendant, by his counsel, moved the
73 court to give the jury the following instruction:

"The court instructs you, gentlemen of the jury, that the act of Congress approved June 13, 1898, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes,' in so far as it purports to apply to sales or agreements to sell or

agreements of sale of live stock at the Union stock yards, Chicago, Illinois, conducted as the evidence shows the sales mentioned in the information were conducted, is in violation of section 8 of article I of the Constitution of the United States, requiring that all duties and imposts and excises shall be uniform throughout the United States, and is also in violation of section 9 of article I of the Constitution of the United States, requiring that no direct tax shall be laid unless in proportion to the census or enumeration thereinbefore directed to be taken, and that no tax or duty shall be laid upon articles exported from any State."

But the court refused to give the said instruction.

To which refusal of the court the defendant, by his counsel, then and there duly excepted and still excepts.

74 And thereupon the court instructed the jury as follows:

"The law question in this case, gentlemen of the jury, was submitted to the court on the demurrer to the information. The only question was whether these stock yards was an exchange or a place similar to an exchange. If it was, the transactions on the stock yards are taxable under the revenue law. The court has held that it was such a place, and this proceeding is only to carry out the judgment of the court, so that an appeal can be taken and the question determined by the supreme court. For that reason I will instruct you that it is your duty—that the evidence in this case shows that this defendant has violated the law; that the stock yards is a place similar to an exchange, and transactions on the stock yards must be evidenced by a memorandum in writing. There was such a memorandum, but it was not stamped. The failure to stamp it is a violation of the law."

To the giving of which instruction the defendant, by his counsel, then and there duly excepted and still excepts.

And thereupon the following proceedings occurred:

The Court: I instruct you, gentlemen of the jury, to return a verdict of guilty. Is that your verdict?

To which instruction and ruling of the court the defendant, by his counsel, then and there duly excepted and still excepts.

And the verdict as instructed by the court was accordingly entered.

General BLACK: As to the second count.

The Court: The other is nolle now.

And thereupon the defendant, by his counsel, entered a motion for a new trial and moved the court to set aside the verdict and grant a new trial.

Which motion the court then and there overruled.

To which ruling of the court in overruling said motion the defendant, by his counsel, then and there duly excepted and still excepts.

And thereupon defendant, by his counsel, moved the court that judgment be entered for the defendant, notwithstanding the verdict.

Which motion the court then and there overruled.

To which ruling of the court in overruling said motion the defendant, by his counsel, then and there duly excepted and still excepts.

76 Thereupon the defendant, by his counsel, then and there moved the court in arrest of judgment and that judgment be arrested.

Which motion the court then and there overruled.

To which ruling of the court the defendant, by his counsel, then and there duly excepted and still excepts.

And thereupon the court rendered the judgment herein, which appears at large elsewhere in the record.

To the said judgment and the action of the court in rendering the same the defendant, by his counsel, then and there duly excepted and still excepts.

And thereupon the following proceedings occurred, to wit, the court addressed the counsel for the defendant and said:

The COURT: If you want to appeal, the supersedeas bond will be seven hundred and fifty dollars.

General BLACK: The order is he stands committed until the fine is paid?

The COURT: Yes.

To which ruling and order of the court the defendant, by his counsel, then and there duly excepted and still excepts.

Mr. STARR: We pray for a writ of error, and the court says it may issue and be made a supersedeas upon filing a bill of exceptions and supersedeas bond within twenty days in the sum of seven hundred and fifty dollars. Is that right?

77

The COURT: Yes.

And because the matters aforesaid do not fully appear of record the defendant presents this his bill of exception, and prays that the same may be signed and sealed by the judge of this court pursuant to the statute, etc., which is accordingly done.

P. S. GROSSCUP, *Judge*.

Endorsed: Gen. No., 2946; Term No., —. In the United States district court, northern district of Illinois, northern division. United States vs. Charles H. Ingwersen. Bill of exceptions. Filed this 10th day of December, A. D. 1898. T. C. MacMillan. Peck, Miller & Starr, counselors-at-law, 913-916 Monadnock block, Chicago.

And afterwards, to wit, on the 10th day of December, A. D. 1898, the assignment of errors was filed in the clerk's office of the district court of the United States for the northern district of Illinois, said assignment of errors being in the words and figures following, to wit:

78 NORTHERN DISTRICT OF ILLINOIS, }
 Northern Division.

I, T. C. MacMillan, clerk of the district court of the United States of America for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of the proceedings had in said court in case No. 2946, wherein The United States of America is the plaintiff and Charles H. Ingwersen is defendant, as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Dist. Court U. S.,
Northern Dist. Illinois,
1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 10th day of December, A. D. 1898.

T. C. MACMILLAN, *Clerk,*
By C. R. PICKARD,
Deputy Clerk.

79 UNITED STATES OF AMERICA, 38 :

The President of the United States to the honorable the judges of the district court of the United States for the northern district of Illinois, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States of America, as plaintiff, and Charles H. Ingwersen, as defendant, a manifest error hath happened, to the great damage of the said Charles H. Ingwersen, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN,
Clerk of the District Court of the United States
for the Northern Dist. of Illinois.

Allowed by—

P. S. GROSSCUP,
District Judge.

80 [Endorsed:] Supreme Court of the United States. —
 — vs. ——. Writ of error. Filed Dec. 10th, 1898.
 T. C. MacMillan, clerk. Copy deposited for the defendant in error
 in the clerk's office, U. S. district court, northern district of Illinois.

NORTHERN DISTRICT OF ILLINOIS, ss:

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the foregoing-entitled cause this 10th day of December, A. D. 1898.

T. C. MACMILLAN,
 Clerk United States District Court,
 Northern District of Illinois.

81 UNITED STATES OF AMERICA, ss:

The President of the United States to the United States of America,
 Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States in and for the northern district of Illinois in the northern division thereof, wherein Charles H. Ingwersen is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable P. S. Grosscup, judge of the district court of the United States for the northern district of Illinois, this tenth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

P. S. GROSSCUP,
 United States District Judge.

Notice rec'd & accepted.

JOHN C. BLACK,
 U. S. Att'y, N. D. Ills.

82 [Endorsed:] Supreme Court of the United States. —
 — vs. ——. Citation. Filed Dec. 10th, 1898. T. C.
 MacMillan, clerk.

On this tenth (10th) day of December, in the year of our Lord one thousand eight hundred and ninety-eight, personally appeared Merritt Starr before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Honorable John C. Black

United States district attorney in and for the northern district of Illinois.

MERRITT STARR.

Sworn to and subscribed the 10th day of December, A. D. 1898.

C. R. PICKARD,

U. S. Commissioner, Nor. Dist. Illinois.

Endorsed on cover: File No. 17,221. N. Illinois D. C. U. S. Term No., 636. Charles H. Ingwersen, plaintiff in error, *vs.* The United States. Filed December 13th, 1898.